

**Form 604
Corporations Act 2001
Section 671B**

Notice of change of interests of substantial holder

To Company Name/Scheme Energy Resources of Australia Limited (ERA)

ACN/ARSN ABN 71 008 550 865

1. Details of substantial holder (1)

Name See Annexure A (the *Substantial Shareholders*)

ACN/ARSN (if applicable) See Annexure A

There was a change in the interests of the substantial holder on: 25/02/2020

The previous notice was given to the 22/11/2011

The previous notice was dated 22/11/2011

2. Previous and present voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial relevant interest (3) in when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

| Class of securities (4) | Previous notice | | Present notice | |
|-----------------------------------|-----------------|------------------|----------------|------------------|
| | Person's votes | Voting power (5) | Person's votes | Voting power (5) |
| Fully paid ordinary shares in ERA | 354 078 854 | 68.39% | 3,186,682,634 | 86.33% |

3. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

| Date of change | Person whose relevant interest changed | Nature of change (6) | Consideration given in relation to change (7) | Class and number of securities affected | Person's votes affected |
|----------------|--|--|---|---|-------------------------|
| 25/02/2020 | See Annexure A | New shares issued by ERA following completion of the renounceable entitlement offer announced by ERA on 15 November 2019. | \$0.15 per new ordinary share | 2,170,503,376 ordinary shares | 2,170,503,376 |
| 25/02/2020 | See Annexure A | New shares issued by ERA following completion of the renounceable entitlement offer announced by ERA on 15 November 2019 pursuant to the Underwriting Agreement dated 15 November 2019 attached at Annexure B. | \$0.15 per new ordinary share | 662,100,404 ordinary shares | 662,100,404 |

4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

| Holder of relevant interest | Registered holder of securities | Person entitled to be registered as holder (8) | Nature of relevant interest (6) | Class and number of securities | Person's votes |
|-----------------------------|---------------------------------|--|---------------------------------|--------------------------------|----------------|
| See Annexure A | North Limited | Not applicable | Registered holder | 1,920,852,964 | 52.04% |
| See Annexure A | Peko-Wallsend Pty Ltd | Not applicable | Registered holder | 1,265,829,670 | 34.29% |

5. Changes in association

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) relation to voting interests in the company or scheme are as follows:

| Name and ACN/ARSN (if applicable) | Nature of association |
|-----------------------------------|-----------------------|
| Not applicable | Not applicable |

6. Addresses

The addresses of persons named in this form are as follows:

| Name | Address |
|----------------|---------|
| See Annexure A | |

Signature

print name

Tim Paine

capacity

Joint Company Secretary
Rio Tinto Limited

sign here



date 27/02/2020

Annexure "A" to Form 604

This is Annexure "A" of 1 page referred to in Form 604 signed by me and dated 27 February 2020.



Tim Paine

Joint Company Secretary, Rio Tinto Limited

Substantial Shareholders

- a) North Limited (ACN 005 233 689) of Level 18, Central Park, 152-158 St Georges Terrace, Perth WA 6000;
- b) Peko-Wallsend Pty Ltd (ACN 000 245 054) of Level 18, Central Park, 152-158 St Georges Terrace, Perth WA 6000;
- c) Rio Tinto Limited (ACN 004 458 404) of Level 7, 360 Collins Street, Melbourne, VIC 3000;
- d) Subsidiaries of Rio Tinto Limited (ACN 004 458 404) other than North Limited and Peko-Wallsend Pty Ltd;
- e) Rio Tinto plc of 6 St James's Square, London SW1Y 4AD; and
- f) Each subsidiary of Rio Tinto plc.

(each a **Substantial Shareholder**, together the **Substantial Shareholders**).

Rio Tinto Limited (ACN 004 458 404) gives this notice on its own behalf and on behalf of each of the other Substantial Shareholders.

Annexure "B" to Form 604

This is Annexure "B" of 56 pages referred to in Form 604 signed by me and dated 27 February 2020.

This Annexure contains a true copy of the original Underwriting Agreement between Energy Resources of Australia and North Limited dated 15 November 2019.

Pursuant the orders made by the Takeovers Panel on 11 December 2019 in the affairs of Energy Resources of Australia [2019] ATP 25, clause 10.4 of the Underwriting Agreement is void and of no effect from the date of those orders.



Tim Paine

Joint Company Secretary, Ro Tinto Limited

North Limited
and
Energy Resources of Australia Limited

Underwriting Agreement

Execution Version

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This Agreement is made on 15 November 2019

Parties

- 1 **North Limited** ABN 22 005 233 689 of Level 18, Central Park, 152-158 St Georges Terrace, Perth WA 6000, Australia (the **Underwriter**).
- 2 **Energy Resources of Australia Limited** ABN 71 008 550 865 of Level 3, Energy House 18-20 Cavenagh Street, Darwin NT 0801, Australia (the **Issuer**).

Recitals

- A The Issuer proposes to raise up to approximately \$476 million under the Offer.
- B The Underwriter has agreed to subscribe for its Entitlement Shares and procure subscriptions for the Entitlement Shares offered to other Eligible Shareholders who are members of the Rio Tinto Group on the terms and conditions of this Agreement.
- C The Underwriter has also agreed to underwrite the Offer on the terms and conditions of this Agreement.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Acceptable Financial Institution means a reputable financial institution (determined by the Underwriter, acting reasonably):

- (a) with a minimum long term credit rating of at least A- from Standard & Poor's or A3 from Moody's Investor Services Inc;
- (b) which does not have any sanction, embargo or similar restriction binding on it; and
- (c) which is an authorised deposit taking institution.

Acceptance Form means a personalised entitlement and acceptance form to apply for Entitlement Shares in the form accompanying the Offer Booklet.

Accepted Entitlement Shares means those Entitlement Shares the subject of Valid Applications by Eligible Shareholders or Eligible Assignees.

Accepting Shareholder means an Eligible Shareholder who delivers a Valid Application to the Underwriter accepting all or part of its Entitlement.

Affiliate has the meaning given to that term in Rule 501(b) under the U.S. Securities Act and also includes, in respect of any person, any other person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person; and **control** (including the terms **controlled by** and **under common control with**) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract or agency or otherwise.

Annual Plan means the annual plan and budget prepared by the Issuer and approved by the Issuer's Board.

Application Money means the application money delivered by Accepting Shareholders or

Eligible Assignees to the Registry in respect of a Valid Application.

ASIC means the Australian Securities & Investments Commission.

ASIC Modifications means any exemptions, modifications or approvals required to be obtained by the Issuer, or agreed by the Issuer to be obtained by the Issuer, from ASIC to enable it to conduct the Offer as contemplated in this Agreement in compliance with the Corporations Act. For this purpose, an ASIC Modification includes ASIC's approval of the Nominee for the purposes of section 615(a) of the Corporations Act.

ASX means the ASX Limited (ABN 98 008 624 691) and, as the context requires, the market it operates.

ASX Materials means:

- (a) the ASX announcement by the Issuer regarding the launch of the Offer;
- (b) the Appendix 3B;
- (c) the Entitlement Offer Cleansing Notice; and
- (d) any other materials used by the Issuer in connection with the Offer,

as lodged by the Issuer with ASX on the Launch Date in accordance with clause 3.1(e).

ASX Waivers means any waivers, confirmations or approvals required to be obtained by the Issuer, or agreed by the Issuer to be obtained by the Issuer, from ASX to enable it to conduct the Offer as contemplated in this Agreement in compliance with the Listing Rules.

Authorisation means:

- (a) an authorisation, consent, license, declaration, approval, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment of any of the above.

BPAY means the bill payment services provided by Australian banks, building societies and credit unions registered with the BPAY scheme.

Board means the Issuer's board of directors, or a duly constituted committee of the directors (as constituted by the Board acting as a whole), acting collectively under the Constitution.

Business Day means a day which is not a Saturday, Sunday or a public holiday in Melbourne, VIC.

Cash Growth Assets means

- (a) the sum of \$20,000,000 plus the Shortfall Bookbuild Premium Amount (if any); and
- (b) interest, proceeds, assets or returns generated from the investment or disposal of, or granting of security over, or other dealing with the sum referred to in paragraph (a) of this definition.

Certificate means a certificate in the form set out in Schedule 2, executed by the Issuer.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Clause 10.7 Dispute means any dispute as to whether or not Closure Implementation (within the meaning of clause 10.7) has occurred.

Closure Plan means the Issuer's rehabilitation plan in respect of the closure of the Ranger Project Area, submitted by the Issuer to the prescribed Northern Territory and Commonwealth Ministers in accordance with the NT Mining Management Act Authorisation and Environmental Requirement 9.1 of the s. 41 Authority and any subsequent amendments approved in accordance with the process outlined in Annexure B of the Mining Management Act Authorisation 0108 and the Ranger Government Agreement.

Commonwealth Security Deposit means the credit balance from time to time of the Ranger Rehabilitation Special Account (as referred to in and established under the Ranger Government Agreement).

Completion occurs when all of the Offer Shares have been allotted by the Issuer in accordance with the Offer.

Conditions Precedent means the conditions precedent to the Underwriter's obligation to underwrite the Offer in clause 3.1.

Constitution means the constitution of the Issuer.

Corporations Act means the *Corporations Act 2001* (Cth), as amended or relieved by the ASIC Modifications, any applicable ASIC class order or any other instrument.

Costs means any costs, charges and expenses.

Customer Indemnity Deed means any document between the Issuer and the issuer of a Bank Guarantee pursuant to which the Issuer indemnifies the issuer in relation to such Bank Guarantee, including (as at the date of this Agreement):

- (a) the customer indemnity deed dated 4 September 2015 between the Issuer and Australia and New Zealand Banking Group Limited;
- (b) the customer indemnity deed dated 1 August 2014 (and extended to 1 August 2020) between the Issuer and Westpac Banking Corporation;
- (c) the customer indemnity deed dated 18 October 2015 between the Issuer and BNP Paribas; and
- (d) the customer indemnity deed dated 29 October 2015 between the Issuer and HSBC Bank Australia Limited.

Defective is defined in clause 6.1(f).

DFA means the ERA DFA as read in conjunction with the "Rio Tinto Energy and Minerals Product Group – Financial Management and Compliance – Financial Authorisation Limits" document as at the date of this Agreement (as amended from time to time by agreement between the Issuer and the Underwriter).

Directors means the directors of the Issuer.

Due Diligence Committee the committee established to undertake due diligence investigations and enquiries on behalf of the Issuer and its Directors in connection with the Offer and the preparation of the ASX Materials.

Due Diligence Investigations means the activities referred to in clause 6.1.

Due Diligence Planning Memorandum means the due diligence planning memorandum adopted by the Due Diligence Committee at the final meeting of the Due Diligence Committee.

Due Diligence Questionnaire means the questionnaire (in the form agreed between the Issuer and the Underwriter prior to the date of this Agreement) for completion by certain members of the senior management team of the Issuer as part of the Due Diligence Investigations.

Due Diligence Report means the report to the Issuer, the Directors and the Underwriter in

accordance with the Due Diligence Planning Memorandum in respect of the Due Diligence Investigations, including all annexures and schedules to the report and all supporting documents and other work papers to which the Underwriter is given access for the purpose of the Due Diligence Investigations.

Eligible Assignee means a person who holds Entitlements in respect of the Offer Shares that were assigned or transferred to them by an 'Eligible Person' as defined in a duly completed application form (approved by the Issuer and the Underwriter) or the Nominee, and who warrants that they are also an 'Eligible Person' as defined in that application form; provided that no person will be an 'Eligible Person' or an Eligible Assignee if that person is in the United States or is acting for the account or benefit of a person in the United States.

Eligible Shareholder means a Shareholder on the Record Date with a registered address:

- (a) in Australia, New Zealand or Singapore; or
- (b) outside Australia, New Zealand and Singapore to whom the Issuer decides it is not unreasonable to make an offer under the Offer after taking into account:
 - (i) the number of non-Australia, New Zealand and Singapore residents, in that place, to whom offers under the Offer would otherwise be made;
 - (ii) the number and value of Shares that would otherwise be offered for issue under the Offer; and
 - (iii) the cost of complying with the laws and any requirements of any regulatory authority, of the place where the Shares would otherwise be offered for issue.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

Entitlement means, in respect of an Eligible Shareholder, its entitlement to be issued Entitlement Shares under the Offer (which may be sold on ASX or transferred to an Eligible Assignee).

Entitlement Offer Cleansing Notice means the notice given to ASX by the Issuer under section 708AA(2)(f) in respect of the Offer.

Entitlement Shares means the Offer Shares proposed to be offered to Eligible Shareholders under the Offer.

ERA DFA means the ERA Delegated Financial Authority Schedule as at the date of this Agreement (as amended from time to time by agreement between the Issuer and the Underwriter).

Event of Default means a breach of any undertaking or representation and warranty under this Agreement, including those set out at clauses 8, 9 and 10.1.

Excluded Information means has the meaning given in clause 8.2(k)(i).

Funds means the total amount of cash held by the Issuer from time to time, including the amount raised, less any transaction costs, of the Offer.

Government Agency includes:

- (a) ASIC;
- (b) any government in any jurisdiction, whether federal, state, territorial or local;
- (c) any governmental, semi-governmental, administrative, judicial or quasi-judicial body, minister, department, office, commission, delegate, instrumentality, agency, board, authority, tribunal, agency or other organisation or entity; and

- (d) any non-government regulatory authority, including ASX.

Growth Assets means:

- (a) Cash Growth Assets; and
(b) Jabiluka Growth Assets.

Indemnified Claim means any Claim in respect of which an Indemnified Party wishes to claim for indemnification under the indemnity in clause 12.

Indemnified Parties means:

- (a) the Underwriter;
(b) each member of the Rio Tinto Group; and
(c) each director, officer, partner, employee, agent and adviser of any person referred to in paragraph (a) or (b) of this definition.

Ineligible Shareholder means a Shareholder who is not an Eligible Shareholder.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
(b) it has had a controller (as defined in the Corporations Act) appointed or is in liquidation or provisional liquidation, under administration or wound up or has had a receiver or receiver and manager appointed to any part of its property;
(c) it is subject to any arrangement, assignment, moratorium or composition, or is protected from creditors under any statute or is dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
(d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or likely to result in any event or circumstance referred to in paragraph (a), (b) or (c) above occurring;
(e) it is taken (under section 459F(1)) to have failed to comply with a statutory demand;
(f) it is the subject of an event described in section 459C(2)(b) or 585 (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
(g) it is otherwise unable to pay its debts as and when they fall due; or
(h) something having a substantially similar effect to any event or circumstance referred to in paragraphs (a) to (g) above happens in connection with that person under the law of any jurisdiction.

Jabiluka means the mineral lease in respect of the Jabiluka Project Area (as defined therein) held by the Issuer (as the assignee of Pancontinental Mining Ltd and Getty Oil Development Company Limited) which was issued in 1982 pursuant to the Mining Act (NT) as in force at that time.

Jabiluka Growth Assets means:

- (a) Jabiluka; and

(b) interest, proceeds, assets or returns generated from the investment or disposal of, or granting of security over, or other dealing with, Jabiluka, subject at all times to the operation of clause 10.4.

Listing Rules means the official listing rules of ASX, as waived or modified in respect of the Issuer, including under the ASX Waivers.

Loan Agreement means the Loan Agreement dated 29 April 2016 between the Issuer and the Underwriter.

Losses means all Claims, demands, damages, losses, Costs and liabilities whatsoever (including reasonable legal costs and disbursements on a full indemnity basis).

LTCMA means the Jabiluka Long Term Care and Maintenance Agreement dated 25 February 2005 between the Issuer, the Northern Land Council (ABN 56 327 515 336) and the Traditional Owners of the Jabiluka Project Area.

Nominee means a person appointed, and approved by ASIC, to act as nominee to sell the Offer Shares that would have otherwise been issued to Ineligible Shareholders.

Offer means the traditional, renounceable pro-rata entitlement offer with retail rights trading made by the Issuer entitling each Eligible Shareholder to subscribe at the Offer Price for 6.13 Offer Shares for every 1 Share held by that Eligible Shareholder pro rata to their holding of Securities (except as otherwise permitted by the Listing Rules or section 9A) to raise approximately \$476 million at the Offer Price.

Offer Booklet means the offer booklet to be sent to Eligible Shareholders in respect of the Offer, setting out the terms of the Offer and including the Acceptance Form.

Offer Materials means:

- (a) the ASX Materials;
- (b) any Acceptance Form;
- (c) the Offer Booklet and any supplementary Offer Booklet; and
- (d) all other communications with Shareholders, nominees and other parties approved or authorised by or on behalf of the Issuer in connection with the Offer.

Offer Price means, in respect of each Offer Share, \$0.15.

Offer Shares means the Shares proposed to be issued under the Offer.

Publication means any media statements, announcements or other materials relating to the Offer published by or on behalf of the Issuer.

Ranger Government Agreement means the government agreement in relation to the Ranger Uranium Mine originally entered into between The Commonwealth of Australia, Peko-Wallsend Operations Ltd, Electrolytic Zinc Company of Australasia Limited and the AAEC on 9 January 1979 (as amended from time to time, including pursuant to an amendment and restatement deed dated 24 January 2013 between the Commonwealth of Australia and the Issuer).

Ranger Project Area has the same meaning as it has in the *Atomic Energy Act 1953* (Cth).

Record Time means 7pm on the Record Date.

Registry means the Issuer's securities registry, Computershare Investor Services Pty Limited (ABN 48 078 279 277).

Regulation S means Regulation S under the U.S. Securities Act.

Rehabilitation means the rehabilitation of the Ranger Project Area and Jabiru in accordance with

the Closure Plan.

Rehabilitation Account means an account(s) opened by the Issuer with an Australian authorised deposit-taking institution and designated as "ERA – Rehabilitation Account" into which the net proceeds of the Offer are to be deposited in accordance with clause 10.1(a).

Rehabilitation Cost means the Australian dollar nominal, undiscounted amount estimated from time to time as being required to complete the Rehabilitation, as reduced by subsequent expenditure on Rehabilitation undertaken in accordance with the Closure Plan.

Rehabilitation Funds means:

- (a) the net Offer proceeds, deposited to the Rehabilitation Account;
- (b) any investment of funds of the Rehabilitation Account, in accordance with clause 10.2; and
- (c) any interest, proceeds or returns generated from the investment of funds of the Rehabilitation Account.

Related Entity means, in relation to an entity (the **first entity**):

- (a) a Subsidiary of the first entity;
- (b) an entity of which the first entity is a Subsidiary; or
- (c) a Subsidiary of another entity of which the first entity is also a Subsidiary.

Relevant Announcement means any statement or announcement in relation to the Offer, its progress, the results of the Offer, the Issuer or the business of the Issuer.

Rio Tinto Group means Rio Tinto Limited, Rio Tinto plc and their respective Related Entities from time to time (excluding the Issuer).

s. 41 Authority means the authority granted under the *Atomic Energy Act 1953* (Cth) to mine, recover, treat and process uranium oxide at the Ranger Project Area.

Settlement Date means, subject to this Agreement, the date specified as such in the Timetable.

Share means a fully paid ordinary share in the capital of the Issuer.

Shareholder means a holder of Shares.

Shortfall Bookbuild means the bookbuild process described in the ASX Materials.

Shortfall Bookbuild Premium Amount means:

- (a) if Shares are issued pursuant to the Shortfall Bookbuild for an issue price per Share that exceeds the Offer Price – the amount equal to the number such Shares so issued multiplied by the difference between the issue price and the Offer Price;
- (b) otherwise – zero.

Shortfall Notice means a notice from the Issuer to the Underwriter specifying the number of Shortfall Shares.

Shortfall Notification Date means the date on which the Shortfall Notice is due.

Shortfall Shares means the number of Offer Shares equal in number to the sum of the Offer Shares (if any):

- (a) for which Valid Applications have not been received by the Issuer from Eligible Shareholders or Eligible Assignees;
- (b) which have not been allocated to Eligible Shareholders or Eligible Assignees in accordance with clause 5.6; and

- (c) which have not otherwise been allocated to institutional and professional investors who have agreed to subscribe for them pursuant to the Shortfall Bookbuild before the Shortfall Notice is given to the Underwriter on the Shortfall Notification Date.

Subsidiary has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of an entity if it is controlled by that entity (as defined in s50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

Terminate means the termination by the Underwriter of all further obligations of the Underwriter under this Agreement in accordance with clause 3.5 or clause 11.

Timetable means the Timetable set out in Schedule 1, as it may be varied under clause 4.1.

Trading Date has the meaning given to that expression in the Listing Rules.

U.S. Person means has the meaning given to that term in Rule 902(k) under the *U.S. Securities Act*.

U.S. Securities Act means the *United States Securities Act of 1933*, as amended.

Valid Application means in respect of:

- (a) the Offer Shares, a duly completed Acceptance Form by an Eligible Shareholder or a duly completed application form (approved by the Issuer and the Underwriter) by an Eligible Assignee is submitted in accordance with the procedure set out in the Offer Booklet, and payment in full for Accepted Entitlement Shares in cleared funds is made to the Registry (including via BPAY) prior to 5.00pm on the Closing Date;
- (b) the Shortfall Shares, payment in full for the Shortfall Shares in cleared funds made to the Issuer on the Settlement Date.

Verification Material means the contents of the file maintained by or on behalf of the Issuer as part of the Due Diligence Investigations, being the documents and information provided in verification of statements made in the ASX Materials.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example or similar expressions does not limit what else might be included.
- (c) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iii) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (iv) A reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement.

- (v) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals and schedules to that agreement or document.
- (vi) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (vii) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (viii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (ix) A reference to a section, Part, Division or Chapter is a reference to a section, Part, Division or Chapter of the Corporations Act.
- (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) A reference to dollars or \$ is to Australian currency.
- (xiii) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (xiv) References to applicable law include all laws of jurisdictions applicable to the Offer or the Issuer within or outside Australia, including the Listing Rules and policies, guidelines, official directives or requests of or by any Government Agency, whether or not having the force of law.
- (xv) A reference to time is to Melbourne, VIC time.
- (xvi) All dates as specified in the Timetable have the same meaning when used in the body of this Agreement.

2 Appointment, participation and sub-underwriting

2.1 Appointment

- (a) The Issuer appoints the Underwriter as the underwriter of the Offer on the terms and conditions of this Agreement.
- (b) The Underwriter accepts the appointment under clause 2.1(a) and agrees, subject to clauses 3 and 10, to underwrite the Offer in accordance with this Agreement.

2.2 Participation in Offer

Unless the Underwriter has Terminated in accordance with the terms of this Agreement, the Underwriter must, before 5:00pm on the Closing Date:

- (a) subscribe for all of its Entitlement Shares; and
- (b) procure subscriptions for all of the Entitlement Shares offered to other Eligible Shareholders who are members of the Rio Tinto Group,

in each case by submitting Valid Applications (including payment in full for such Entitlement Shares).

2.3 Sub-Underwriters

The Underwriter may at any time, with the prior written consent of the Issuer, appoint sub-underwriter(s) to sub-underwrite all or part of the Offer, provided that any pro forma letter, agreement or form used in connection with any appointment of sub-underwriter(s) shall be approved by the Issuer.

3 Conditions

3.1 Conditions Precedent

The obligations of the Underwriter to underwrite the Offer under clause 5.8 under this Agreement are conditional on:

- (a) **(Due Diligence Questionnaire)** written responses to the Due Diligence Questionnaire signed by the persons nominated (and approved by the Underwriter) as executing parties in the Due Diligence Questionnaire having been given to the Underwriter (in a form acceptable to the Underwriter, acting reasonably) by 8.00am on the Launch Date;
- (b) **(Other due diligence materials)** delivery of:
 - (i) the Due Diligence Report; and
 - (ii) all other opinions, reports or sign-offs (including Australian legal, accounting and management) to be provided to the Issuer, the Directors and the Underwriter in relation to the Offer contemplated by the Due Diligence Planning Memorandum, to the Underwriter (in a form acceptable to the Underwriter, acting reasonably) by 8.00am on the Launch Date;
- (c) **(ASX Waivers)** ASX having granted the ASX Waivers (including approval of the Timetable) in a form acceptable to the Underwriter (acting reasonably) by 8.00am on the Launch Date;
- (d) **(ASIC Modifications)** ASIC having granted the ASIC Modifications in a form acceptable to the Underwriter (acting reasonably) by 8.00am on the Launch Date;
- (e) **(ASX Materials)** the Issuer issuing and giving to ASX the ASX Materials (in a form acceptable to the Underwriter) prior to 9.30am on the Launch Date;
- (f) **(Offer Booklet)** the Offer Booklet (in a form acceptable to the Underwriter) being sent to Eligible Shareholders in accordance with clause 5.1(a);
- (g) **(Shortfall Notice)** delivery by the Issuer to the Underwriter of a duly executed Shortfall Notice by 9.00am on the Shortfall Notification Date in accordance with clause 5.5;
- (h) **(Certificates)** delivery by the Issuer to the Underwriter of a duly executed Certificate by 9.00am on each of the Shortfall Notification Date and the Settlement Date in accordance with clauses 5.5 and 5.7 (respectively);

- (i) **(New circumstances sign-off)** the Underwriter receiving certificate(s) as contemplated by paragraph 13.2 of the Due Diligence Planning Memorandum and signed by each Management Reporting Person (as such term is defined in the Due Diligence Planning Memorandum) by 9.00am on the Settlement Date; and
- (j) **(ASX Waivers and ASIC Modifications)** ASX having not withdrawn or modified the ASX Waivers, and ASIC having not withdrawn or modified the ASIC Modifications, on or before 2.00pm on the Settlement Date.

3.2 Best endeavours

The Issuer must use its best endeavours to procure that the Conditions Precedent are satisfied by their respective deadlines.

3.3 Benefit of conditions

The Conditions Precedent are for the benefit of the Underwriter only and may only be waived by the Underwriter in writing in its absolute and unfettered discretion.

3.4 Notice

The Issuer must notify the Underwriter:

- (a) when it has satisfied any Condition Precedent; and
- (b) if any Condition Precedent is not satisfied, or becomes incapable of satisfaction, by the relevant time for satisfaction referred to in that Condition Precedent,

as soon as practicable after becoming aware of that matter.

3.5 Conditions not satisfied

If any Condition Precedent is not fulfilled (or waived under clause 3.3 by the Underwriter) by the relevant time for satisfaction referred to in that Condition Precedent (or such later time as agreed by the Underwriter) then this Agreement (other than this clause 3.5 and clauses 1, 6.3, 6.4, 7, 12, 13.4, 14, 15 and 16 (other than clause 16.9)) is at an end as to its future operation except for the enforcement of any right or claim which arises on or has arisen before this Agreement comes to an end.

4 General Conduct of the Offer

4.1 Timetable

The Timetable may be amended by the Issuer only if:

- (a) the Underwriter provides its prior written consent; and
- (b) to the extent required, ASX and ASIC provide their prior written consent.

4.2 Compliance

The Issuer must conduct the Offer in accordance with the Offer Materials, this Agreement, the Timetable, the Constitution, the Listing Rules, the Corporations Act and all other applicable laws.

4.3 Offer Materials, support and access

- (a) The Issuer must at its own cost, if requested by the Underwriter:
 - (i) provide advanced copies of drafts of the Offer Materials to the Underwriter for distribution to prospective sub-underwriters; and

- (ii) provide a marked copy of the final version of the Offer Materials sent to Shareholders showing all changes from the draft(s) provided by the Underwriter to prospective sub-underwriters.
- (b) Until the Trading Date, the Issuer must keep the Underwriter promptly and fully informed of all strategies, developments and discussions relevant to the Offer, and all material strategies, developments and discussions relevant to the Issuer that a reasonable investor would consider material to a decision to invest in Offer Shares, and ensure that no initiatives relevant to the Offer, or material strategies, developments and discussions relevant to the Issuer that a reasonable investor would consider material to a decision to invest in Offer Shares, are undertaken without agreement of the Underwriter and ensure that such matters are in accordance with this Agreement.
- (c) The Issuer will use reasonable endeavours to procure the Registry and any securities analytics firm engaged by it in relation to the Offer to do all reasonably necessary things to enable:
 - (i) the Issuer to comply with its obligations under this Agreement; and
 - (ii) the Underwriter to comply with its obligations under clause 5.8.

4.4 Announcements

- (a) Until Completion, the Issuer will not make or approve, the publication or release of any Relevant Announcement without the prior approval of the Underwriter (such approval not to be unreasonably withheld, conditioned or delayed), unless the Issuer is required by the Corporations Act, the Listing Rules or any other applicable law to make a Relevant Announcement (in which case it must, use its reasonable endeavours to consult with, and take into account the comments of, the Underwriter as to the form, content and timing of the Relevant Announcement prior to making the Relevant Announcement).
- (b) The Issuer and the Directors accept full responsibility for the content of, or any information contained in, any Relevant Announcement which the Underwriter is requested to issue or approve.

4.5 Holding statements

The Issuer must dispatch new holding statements in respect of the Offer Shares issued pursuant to this Agreement, in accordance with the Corporations Act, the Constitution, the Listing Rules and any other applicable law, as soon as practicable after the Settlement Date.

5 Conduct of the Offer

5.1 Offer Materials

The Issuer must:

- (a) dispatch the Offer Booklet to each Eligible Shareholder on or before the Despatch Date; and
- (b) comply with Listing Rule 7.7.1(b) and send to each Ineligible Shareholder notice of the Offer and that they will not be eligible to participate in the Offer.

5.2 Registry

The Issuer must ensure that the Registry:

- (a) directly, provides or causes to be provided to the Underwriter such information as is reasonably requested by it (including providing reports as at the Record Time in relation

to registered shareholdings in the Issuer required by the Underwriter) to enable or assist the Underwriter to comply with its obligations under this Agreement.

- (b) receives the Acceptance Forms, application forms and the Application Money;
- (c) credits the relevant bank account on a daily basis with the Application Money received;
- (d) maintains (and permits the Underwriter to inspect at any reasonable time) accurate records of the receipt of applications for Offer Shares (regardless of whether they are Valid Applications), the banking of the Offer Price in respect of each Offer Share applied for, the processing of applications for Offer Shares, the dispatch of holding statements in respect of the Offer Shares issued pursuant to the Offer and the despatch to applicants under the Offer of any refunds of Application Money not applied in respect of the issue of Offer Shares, for at least seven years after the Settlement Date or until any proceedings commenced during that period in relation to the Offer have been finally resolved (including any appeal proceedings), whichever period is longer;
- (e) delivers a computerised list of Accepting Shareholders, and Eligible Assignees who have delivered Valid Applications to the Underwriter accepting all or part of their Entitlements, under the Offer to the Underwriter on a daily basis until the day that is three Business Days after the Closing Date; and
- (f) whenever requested by the Underwriter, notifies the Underwriter of the particulars of each Acceptance Form and application form received and the number of Entitlement Shares proposed to be allotted.

5.3 Trading of Entitlements in respect of Eligible Shareholders

The Issuer must apply to ASX for official quotation of Entitlements in respect of Shareholders and thereafter use its best endeavours to procure that:

- (a) official quotation is granted by ASX in respect of those Entitlements from the date set out in the Timetable;
- (b) those Entitlements are allotted to Eligible Shareholders on the date set out in the Timetable;
- (c) those Entitlements are eligible for trading on ASX during the period set out in the Timetable; and
- (d) those Entitlements are tagged by the ASX such that they cannot be purchased by investors in the United States.

5.4 Applications

On the Business Day after the Closing Date, the Issuer must:

- (a) inform the Underwriter of the number of invalid applications for Entitlement Shares under the Offer and the grounds on which the Issuer believes they are not valid, and permit the Underwriter to review those invalid applications; and
- (b) in respect of any invalid applications for Entitlement Shares which are not valid only because the Application Money has been paid by cheque which has not yet cleared:
 - (i) use reasonable efforts to maximise the clearance of those cheques by 5.00pm on the Business Day immediately preceding the Shortfall Notification Date; and
 - (ii) include the Entitlement Shares the subject of those invalid applications in the Shortfall Shares only if they have not become Valid Applications after complying with clause 5.6.

5.5 Shortfall Notice and Certificate

Not later than 9.00am on the Shortfall Notification Date, the Issuer must give the Underwriter:

- (a) a Shortfall Notice; and
- (b) a Certificate dated the Shortfall Notification Date.

5.6 Acceptance of Valid Applications

- (a) The Issuer must accept all Valid Applications for Offer Shares which it receives from Accepting Shareholders to the extent of their Entitlements.
- (b) Where an Accepting Shareholder (other than a person referred to in Listing Rule 10.11) has submitted a Valid Application for a number of Offer Shares that exceeds their Entitlement (**Shortfall Applicant**), the Issuer must accept such Valid Application and issue the relevant additional number of Offer Shares to such Shortfall Applicant provided that:
 - (i) there is a sufficient number of Offer Shares to satisfy the Valid Applications of all Shortfall Applicants in excess of their Entitlements; or
 - (ii) if there is not a sufficient number of Offer Shares to satisfy the Valid Applications of all Shortfall Applicants in excess of their Entitlements, the number of Offer Shares to be issued to each such Shortfall Applicant in excess of its Entitlement will be scaled back:
 - (A) on a pro-rata basis, according to the number of Shares held by each Shortfall Applicant as at the Record Date;
 - (B) so that the maximum number of Offer Shares to be issued under this paragraph (b) does not exceed the total number of Offer Shares that have not been taken up under the Entitlement Offer; and
 - (C) so that no person will be issued with more than the number of Offer Shares they applied for.
- (c) The Issuer must accept all Valid Applications for Shortfall Shares.
- (d) The Issuer's obligations under this clause do not require it to breach any law or Listing Rule.

5.7 Certificate

Not later than 9.00am on the Settlement Date, the Issuer must give the Underwriter a Certificate dated the Settlement Date.

5.8 Subscription for Shortfall Shares

By no later than 4.00pm on the Settlement Date, the Underwriter must:

- (a) subscribe, or procure subscriptions, for the Shortfall Shares; and
- (b) pay to the Issuer, or procure payment to the Issuer of, the Offer Price in respect of the Shortfall Shares,

unless the Underwriter has Terminated.

5.9 Allotment and issue

The Issuer must allot and issue:

- (a) the Accepted Entitlement Shares to the Accepting Shareholders and Eligible Assignees; and
- (b) the Shortfall Shares to the Underwriter or any member of the Rio Tinto Group (as the case may be) who subscribed for those Shortfall Shares under clause 5.8,

by no later than 9.30am on the Issue Date.

5.10 Nominee sale facility

The Issuer undertakes that it:

- (a) has appointed, or will appoint, the Nominee and such Nominee is approved by ASIC;
- (b) will issue to the Nominee the Entitlements that would otherwise have been issued to Ineligible Shareholders; and
- (c) will procure that the Nominee uses reasonable endeavours to sell such Entitlements and distributes to each of those Ineligible Shareholders their proportion of the proceeds of the sale net of expenses,

in each case, in accordance with section 615 of the Corporations Act.

6 Due Diligence Investigations

6.1 Obligation

Until Completion, the Issuer must:

- (a) make such enquiries as are reasonable; and
- (b) exercise due diligence in accordance with the Due Diligence Planning Memorandum, with the purpose of ensuring that:
 - (c) there are no omissions from the Offer Materials of information without which the relevant documents would be, or would become, misleading or deceptive;
 - (d) no statement in any of the Offer Materials is, or becomes, false, misleading or deceptive;
 - (e) the issue of any of the Offer Materials does not constitute conduct that is misleading or deceptive or is likely to mislead or deceive; and
 - (f) the Issuer is made aware of any circumstances which may render the Entitlement Offer Cleansing Notice defective (as that term is defined in section 708AA(11) (**Defective**) as soon as practicable after any such circumstance arises.

6.2 Supplementary Cleansing Notice

If the Issuer is notified or becomes aware:

- (a) that the Entitlement Offer Cleansing Notice is Defective;
- (b) of any Excluded Information that would have been required to be disclosed in the Entitlement Offer Cleansing Notice (including, in the case of a new circumstance which arises after the Entitlement Offer Cleansing Notice is given to ASX, if it had arisen before the Entitlement Offer Cleansing Notice was given to ASX);

- (c) of a change to the potential effect of the Offer on control of the Issuer or to the consequences of that effect; or
 - (d) that any of the Offer Materials are, or contain a statement which is, misleading or deceptive or likely to mislead or deceive (including by misstatement or omission or as a result of a new circumstance that has arisen since the relevant document was issued),
- the Issuer must immediately notify the Underwriter of that information or matter and must, if required by the Underwriter or the Corporations Act, as soon as practicable:
- (e) give to ASX a correcting notice under section 708AA(10); and
 - (f) prepare and give to ASX an amendment or supplement in respect of that information or matter in accordance with section 708AA(12),

in each case in a form approved in writing by the Underwriter, such approval not to be unreasonably withheld, conditioned or delayed. Any such approval is provided without prejudice to the rights of the Underwriter to Terminate. Following the issue of any such correcting notice, amendment or supplement, the Issuer must immediately take such action as may reasonably be requested by the Underwriter (including despatching copies of such correcting notice, amendment or supplement to all recipients of the Offer Materials).

6.3 Due diligence materials

Subject to clause 6.5, the Issuer must provide the Underwriter with reasonable access to, and on request, copies of the Due Diligence Report, and all materials and documents used or created in connection with the Due Diligence Investigations, on receipt of reasonable notice from the Underwriter, and must maintain those materials and documents for that purpose for at least seven years after the Settlement Date or until any proceedings commenced during that period in relation to the Offer have been finally resolved (including any appeal proceedings), whichever period is longer.

6.4 Access to premises, books and records

Subject to clause 6.5, the Issuer agrees to provide the Underwriter and its officers and advisers with all information and data (including confidential information prepared for or by the Issuer) and assistance as the Underwriter deems appropriate (or as may be required by any Government Agency) for the purposes of the Offer or in connection with any actual or threatened legal, regulatory or administrative enquiry or proceedings arising out of or in connection with the Offer. The Issuer authorises the Underwriter to use such information in connection with the Offer and in connection with any actual or threatened legal, regulatory or administrative enquiry or proceedings arising out of or in connection with the Offer.

6.5 Legal professional privilege

The Issuer must provide any information, assistance and facilities which the Underwriter requires for those purposes, provided that if the provision of information would lead to a loss of legal professional privilege in that information, the Issuer must notify the Underwriter of that fact and use its best endeavours to provide such information in a manner which, to the extent reasonably practicable, will not result in a loss of any legal professional privilege.

7 Costs

7.1 Costs

- (a) Subject to clause 7.1(b), the Issuer must pay, or reimburse the Underwriter where the Underwriter has incurred, the Underwriter's Costs of and incidental to the Offer up to a maximum aggregate amount of \$100,000 (inclusive of GST and all other taxes) within five

Business Days after the Underwriter has delivered to the Issuer a written request for payment or reimbursement and an invoice setting out such Costs.

- (b) The Costs which must be paid by the Issuer or reimbursed to the Underwriter under this clause 7.1 are only the following:
 - (i) reasonable third party Costs (including reasonable legal Costs) that the Underwriter incurs in respect of this Agreement or any aspect of the Offer including the conduct of the Due Diligence Investigations, the preparation of the Offer Materials and any review of the Offer Materials or any aspect of the Offer undertaken by ASX, ASIC or any other regulatory body; and
 - (ii) any stamp duty, transfer taxes, withholding taxes or similar taxes (but excluding any income tax of the Underwriter) payable in respect of this Agreement or any aspect of the Offer.
- (c) Nothing in this clause 7.1 limits the obligations of the Issuer under clause 12.

7.2 Costs on Termination

If the obligations of the Underwriter under this Agreement are Terminated or the Offer does not proceed or is not completed for any reason, the Issuer will be obliged to pay to the Underwriter (to the extent that it has not already done so) the Costs referred to in clause 7.1 within five Business Days after the Underwriter has delivered to the Issuer a written request for payment or reimbursement and an invoice setting out such Costs.

7.3 Set-off

- (a) The Underwriter may set-off all amounts payable under this clause 7 against any payment obligation owed by the Underwriter or any member of the Rio Tinto Group to the Issuer (including in relation to the subscription for Offer Shares).
- (b) The Issuer must pay all amounts payable to the Underwriter under this Agreement without any deduction, set-off or counter-claim and without deduction for any withholding or similar taxes or charges. No payments made to third parties by the Issuer will reduce amounts payable by the Issuer to the Underwriter under this Agreement.

7.4 Confidential

The Issuer agrees that all expense arrangements with the Underwriter will be kept confidential (except to the extent otherwise required by any applicable law).

8 Representations and Warranties

8.1 Mutual representations and warranties

Each party represents and warrants to the other party (which has entered into this Agreement in reliance on these representations and warranties) that each of the following statements is now, and at all times until Completion will be, true and correct and not misleading:

- (a) **(status)** It is duly incorporated under the laws of the place of its incorporation.
- (b) **(capacity)** It has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates.
- (c) **(corporate authority)** It has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates.

- (d) **(Authorisation)** It holds each Authorisation that is necessary to:
 - (i) execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these Authorisations is subject.
- (e) **(Agreement effective)** This Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms subject to any necessary stamping or registration.

8.2 Issuer's representations and warranties

The Issuer represents and warrants to the Underwriter (which has entered into this Agreement in reliance on these representations and warranties) that each of the following statements is now, and at all times until Completion will be, true and correct and not misleading:

- (a) **(Offer Materials and Publications)** The Offer Materials and Publications:
 - (i) comply with all applicable laws, including the Corporations Act;
 - (ii) do not contain a statement which is misleading or deceptive and do not omit information required by the Corporations Act or any other applicable law; and
 - (iii) are not misleading or deceptive and are not likely to mislead or deceive,and the distribution of the Offer Materials of itself will not constitute conduct by any person which is misleading and deceptive.
- (b) **(conduct)** The Issuer has not engaged in, and will not engage in, conduct that is misleading or deceptive or which is likely to mislead or deceive in connection with the issue of the Offer Materials or the making of the Offer.
- (c) **(disclosure obligations)** The Issuer is not in breach of, and will not before Completion breach, any provision of chapter 3 of the Listing Rules or Chapter 6CA.
- (d) **(opinions and belief)** Any statement of opinion or belief by or on behalf of the Issuer, or by the Directors, contained in the Offer Materials or in any Publication will be truly and honestly held by the person making the statement, and the maker of the statement will have reasonable grounds for holding the opinion or belief.
- (e) **(future matters)** There are reasonable grounds for the making of any statements relating to future matters (including financial forecasts) contained in the Offer Materials or any Publication provided by the Issuer.
- (f) **(information)** All information in relation to the Offer provided to the Underwriter and its representatives (including its directors, officers, partners, employees, agents and advisers) by or on behalf of the Issuer (including all responses provided by the Issuer to the questions contained in the Due Diligence Questionnaire) is, or will be when provided in its final form, true, complete and accurate and the Issuer has disclosed in the ASX Materials all information that has not previously been publicly disclosed by the Issuer that investors and their professional advisers would reasonably require for the purposes of making an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of the Issuer and the rights and liabilities to expect to find the information in a disclosure document.

- (g) **(due diligence)**
 - (i) The Due Diligence Investigations have been undertaken in accordance with the Due Diligence Planning Memorandum.
 - (ii) All material statements contained in the Offer Materials have been properly verified by appropriately qualified persons.
 - (iii) The Verification Material contains the material collected to verify the material statements made in the Offer Materials, and the Verification Material is accurate in all material respects.
- (h) **(Certificate)** The contents of each Certificate given under this Agreement will be true and correct and not misleading or deceptive as at the date and time the Certificate is stated to be given.
- (i) **(Offer Shares)**
 - (i) The Offer Shares, from their date of issue, will:
 - (A) be fully paid, validly issued and remain validly issued; and
 - (B) rank equally in all respects, including for future distributions payable, with other issued Shares.
 - (ii) The Issuer has the ability to issue the Offer Shares free from all Encumbrances (other than those contained in the Constitution), and applicants for the Offer Shares will receive good, valid and incontestable title to the Offer Shares free from any Encumbrance (other than those contained in the Constitution).
- (j) **(Shares)** The Shares are a class of securities that satisfy the requirements of section 708AA so as to entitle the Issuer to conduct the Offer without a requirement for a prospectus, and the Issuer is otherwise entitled to conduct the Offer without a prospectus.
- (k) **(no Excluded Information)**
 - (i) Other than the Offer and its purpose and other information contained in the last draft of the ASX Materials provided to the Underwriter prior to execution of this Agreement, it is not aware of any information that:
 - (A) would be required to be disclosed as 'excluded information' under section 708AA(7)(d) (**Excluded Information**); or
 - (B) is otherwise not generally available at the date of this Agreement which, if made generally available, would be likely to have a material effect upon the price or value of the Shares.
 - (ii) It is not aware of anything that will result in there being any Excluded Information at any time before Completion.
- (l) **(no section 708AA(3) determination)** No determination by ASIC under section 708AA(3) in respect of the Issuer is currently in force, and no such determination in respect of the Issuer has been in force at any time in the 12 months prior to the date of this Agreement.
- (m) **(no on-sale restrictions)** Each offer for sale and each sale of Offer Shares will not be an offer or sale to which section 707(3) applies so as to require the offeror or seller to prepare and lodge with ASIC a disclosure document (as defined in the Corporations Act) relating to the offer or sale.

- (n) **(Entitlement Offer Cleansing Notice)** The Issuer is able to provide, and there is nothing preventing it from providing, the Entitlement Offer Cleansing Notice as contemplated by clause 9.1(f).
- (o) **(Listing)** The Issuer:
 - (i) is admitted to the official list of ASX and, since the date that is 12 months prior to the date of this Agreement, quotation of the Shares on ASX has not been suspended, halted or terminated (other than as contemplated in this Agreement);
 - (ii) the Offer Shares will be eligible under the Listing Rules and other requirements of ASX for quotation on ASX; and
 - (iii) will not breach the Listing Rules in relation to the making of the Offer.
- (p) **(Insolvency)** the Issuer is not Insolvent as at the date of this Agreement and there is no act which has occurred or any omission made prior to the date of this Agreement which may result in the Issuer becoming Insolvent.
- (q) **(no contravention)** The Issuer has not contravened, and the Issuer's execution of this Agreement, the performance by the Issuer of its obligations under this Agreement or the carrying out by it of the transactions contemplated by this Agreement does not and will not contravene, any:
 - (i) applicable law;
 - (ii) Authorisation;
 - (iii) agreement, deed, trust, document or other arrangement; or
 - (iv) judgment of any Court,binding on the Issuer or its assets.
- (r) **(financial information)**
 - (i) The historical, forecast and pro-forma financial and accounting information and financial ratios in the Offer Materials:
 - (A) are fully and fairly presented and have been prepared on the basis described in the Offer Materials; and
 - (B) have been prepared in good faith and in accordance with applicable laws, including the recognition, measurement and disclosure principles prescribed by the Australian equivalents of International Financial Reporting Standards and other mandatory financial reporting requirements in Australia.
 - (ii) The assumptions and adjustments used in the preparation of the historical, forecast and pro-forma financial and accounting information and financial ratios in the Offer Materials are reasonable and appropriate to give effect to the transactions and circumstances referred to in the Offer Materials.
- (s) **(no directed selling efforts)** with respect to those Offer Shares sold in reliance on Regulation S, neither the Issuer, nor any person acting on behalf of the Issuer, has engaged or will engage directly or indirectly in any 'directed selling efforts' within the meaning of Rule 902(c) under the U.S. Securities Act; provided, for the avoidance of doubt, no representation or warranty under this clause 8.2(s) is being made with respect to the Underwriter, its Affiliates (other than the Issuer) or any person acting on behalf of them.

- (t) **(stabilization; manipulation)** neither the Issuer nor any person acting on behalf of the Issuer, has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of the Offer Shares in violation of any applicable law; provided, for the avoidance of doubt, no representation or warranty under this clause 8.2(t) is being made with respect to the Underwriter, its Affiliates (other than the Issuer) or any person acting on behalf of them.
- (u) **(foreign private issuer and no substantial U.S. market interest)** the Issuer is a 'foreign private issuer' (as defined in Rule 405 under the U.S. Securities Act) and there is no 'substantial U.S. market interest' (as defined in Rule 902(j)(1) under the U.S. Securities Act) in the Offer Shares or any security of the same class or series as the Offer Shares.
- (v) **(no registration)** it is not necessary in connection with the issue of the Entitlements or the initial offer, sale and delivery of the Offer Shares by the Issuer, in the manner contemplated by this Agreement and the Offer Materials, to register the Entitlements or the Offer Shares under the U.S. Securities Act, it being understood that the Issuer makes no representation or warranty as to any subsequent resale of the Offer Shares.

8.3 Underwriter's representations and warranties

The Underwriter represents and warrants to the Issuer (which has entered into this Agreement in reliance on these representations and warranties) that each of the following statements is now, and at all times until Completion will be, true and correct and not misleading:

- (a) **(non-registration)** the Underwriter understands that the Entitlements and the Offer Shares have not been, and will not be, registered under the U.S. Securities Act and may only be offered or sold outside the United States, in "offshore transactions" (as defined in Rule 902(h) under Regulation S) in reliance on Regulation S;
- (b) **(no directed selling efforts)** with respect to Offer Shares to be offered and sold in reliance on Regulation S, neither the Underwriter nor any of its Affiliates (other than the Issuer) nor any person acting on behalf of the Underwriter or any of its Affiliates (other than the Issuer) have engaged, or will engage, directly or indirectly in any "directed selling efforts" within the meaning of Rule 902(c) of the U.S. Securities Act; provided, for the avoidance of doubt, no representation or warranty under this clause 8.3(c) is being made with respect to the Issuer or any person acting on behalf of it; and
- (c) **(stabilization; manipulation)** neither the Underwriter nor its Affiliates (other than the Issuer) nor any person acting on behalf of the Underwriter or any of its Affiliates (other than the Issuer) has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of the Offer Shares in violation of any applicable law.

8.4 Independent construction

Each of the paragraphs and sub-paragraphs of clauses 8.1, 8.2 and 8.3 will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub paragraph.

9 Undertakings

9.1 Undertakings by the Issuer

The Issuer must:

- (a) **(no contravention)** until Completion, not commit, be involved in or acquiesce in any activity which breaches:
 - (i) the Corporations Act;
 - (ii) the Listing Rules;
 - (iii) the Constitution;
 - (iv) any legally binding requirement of ASIC or the ASX; or
 - (v) any other applicable law;
- (b) **(notice of breach)** immediately notify the Underwriter of:
 - (i) any breach of any representation, warranty or undertaking given by it under this Agreement; or
 - (ii) the occurrence of any of the events described in clause 11.1 or 11.2;
- (c) **(communications)** until Completion, promptly provide the Underwriter with copies of any communication to or from ASX, ASIC or any other Government Agency relating to, or that may be material in the context of, the Offer;
- (d) **(Constitution)** until Completion, not vary any term of the Constitution without the prior written consent of the Underwriter to the terms of the variation, such consent not to be unreasonably withheld, conditioned or delayed;
- (e) **(quotation)** use its best endeavours to procure that quotation on ASX of the Offer Shares is granted by the Quotation Approval Date and commences from the opening of trading on the Trading Date;
- (f) **(Entitlement Offer Cleansing Notice)** lodge with ASX the Entitlement Offer Cleansing Notice by 9.30am on the Launch Date;
- (g) **(moratorium)** not, without the prior written consent of the Underwriter, at any time after the date of this Agreement and before the expiration of 90 days after the Settlement Date, allot or agree to allot or indicate in any way that it may or will allot or agree to allot any Shares of the Issuer or other securities that are convertible or exchangeable into Shares of the Issuer, or that represent the right to receive Shares of the Issuer, other than pursuant to:
 - (i) the Offer;
 - (ii) this Agreement;
 - (iii) an employee incentive scheme (as that term is defined in the Listing Rules); or
 - (iv) the exercise of options, or the conversion or exchange of any convertible or exchangeable securities, on issue as at the date of this Agreement;
- (h) **(business)** until 90 Business Days after Completion, carry on the business of the Issuer, in the ordinary course and not (except as disclosed to ASX in accordance with the Listing Rules prior to the date of this Agreement or in the ASX Materials);
 - (i) dispose of or charge, or agree to dispose of or charge, the whole or any part of its business or its property (except in the ordinary course of business);

- (ii) vary in a material respect any term of any contract, deed or other agreement which is material to the making of an informed investment decision in relation to the Offer Shares; or
- (iii) enter into any agreement or commitment which is material in the context of the Issuer or which contains a substantial or onerous obligation for the Issuer, without the prior written consent of the Underwriter;
- (i) **(notice to nominees)** send a notice to Shareholders whom the Issuer believes hold their Shares as nominee instructing them not to send any Offer Materials to any Ineligible Shareholder for whom they are the nominee holder and not to submit any Acceptance Form or otherwise purchase Offer Shares on behalf of any Ineligible Shareholder;
- (j) **(excluded shareholders)** give the required notification to Ineligible Shareholders in accordance with section 9A of the Corporations Act and Listing Rule 7.7;
- (k) **(ASX Bulletin)** send a notice to ASX on or before the Launch Date, in a form reasonably acceptable to the Underwriter (acting reasonably), requesting that it issue a participant bulletin advising that no Ineligible Shareholder or person in the United States, or person that is acting for the account or benefit of a person in the United States, is entitled to acquire Entitlements that are traded on ASX;
- (l) **(s615 nominee)** appoint the Nominee; and
- (m) **(Ineligible Shareholders)** not allocate Offer Shares to any Shareholder who is an Ineligible Shareholder or who is acting for the account or benefit of a person who is an Ineligible Shareholder.

The Issuer acknowledges and agrees that each of the undertakings in this clause 9 is a material term of this Agreement. Each of the paragraphs and sub-paragraphs in this clause 9 will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph.

9.2 Undertakings by the Underwriter

The Underwriter must immediately notify the Issuer upon becoming aware of any breach of any representation or warranty given by it under this Agreement.

10 Dealing with Proceeds and use of funds and other undertakings

10.1 Further Undertakings

The Issuer undertakes in favour of the Underwriter to, except where otherwise permitted under this Agreement (including clauses 10.3 and 10.4) or with the prior written consent of the Underwriter:

- (a) **(Rehabilitation Account)** subject to clauses 10.1(b), 10.1(c) and 10.1(d) below, deposit the net proceeds of the Offer in the Rehabilitation Account;
- (b) **(Purpose)** use the Rehabilitation Funds only for the purpose **(Purpose)** of:
 - (i) remediation of the Ranger Project Area in accordance with the s. 41 Authority (which, for the avoidance of doubt, includes the Environmental Requirements), the Issuer's rehabilitation objectives as outlined in the authorisation to operate issued under the NT Mining Management Act, and the Closure Plan **(Rehabilitation)**;
 - (ii) head office costs incurred in the usual course;

- (iii) transfers required to be made to the Commonwealth Security Deposit pursuant to the Ranger Government Agreement;
- (iv) indemnity payments owing with respect to any bank guarantee in favour of the Commonwealth of Australia for the purposes of the Ranger Government Agreement;
- (v) taking out and maintaining insurances with a reputable insurer in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the business and assets of the Issuer (including all insurance required by applicable law); or
- (vi) emergency obligations (including but not limited to matters pertaining to health, safety and the environment or in respect of any amounts payable to or under the direction of any law enforcement, regulatory agency or court where the Board considers, in their reasonable opinion, it is required by any applicable law or regulation binding on the Issuer);

and not for any other purpose, except where agreed to in writing between the parties.

- (c) **(Expenditure waterfall in relation to Rehabilitation)** apply the Rehabilitation Funds for the Purpose as specified in clause 10.1(b) only, and only after:
 - (i) any cash and cash equivalents at bank and any cash flows from processing and liquidating stockpiles and inventories; and
 - (ii) investments in trust funds, including the Commonwealth Security Deposit, where and to the extent it is permissible pursuant to the Ranger Government Agreement to withdraw and apply such funds,have been exhausted;
- (d) **(Expenditure from the Rehabilitation Account);**
 - (i) state in the Issuer's Annual Plan the amount of funds anticipated to be drawn from the Rehabilitation Account during each Annual Plan period and to have that Annual Plan approved by the Issuer's Board;
 - (ii) obtain approval from the Issuer's Board in writing and in advance, for any anticipated expenditure to be drawn from the Rehabilitation Account which was not approved in the Annual Plan, or where the forecast total costs for a calendar year exceed the approved Annual Plan;
- (e) **(compliance with DFA)** not enter into any commitment or incur any expense (whether of a capital or operational nature) not approved by the relevant person(s), committee(s) or board(s) of the Issuer and the Underwriter and its related body corporates as set out in the DFA (to the extent such approval is contemplated in the DFA) (such person(s), committee(s) or board(s) being the **Relevant Approver**) having regard to the amount of expenditure or commitment (as applicable) or otherwise approved by the Underwriter. For this purpose (and without limiting the DFA):
 - (i) any "Capital Expenditure" (as contemplated by the DFA) greater than A\$5,000,000 will require the approval of the Relevant Approver of the Underwriter and its related body corporates and the Board of the Issuer; and
 - (ii) any "Operating expense" (as contemplated by the DFA) greater than A\$20,000,000 will require the approval of the Relevant Approver of the Underwriter and its related body corporates and the Board of the Issuer.

The Issuer acknowledges that this paragraph (e) applies notwithstanding any provision of the DFA which states that the approval is "advisory only and not binding on" the Issuer (or words to that effect);

- (f) **(No dividends, distributions or dealings with share capital)** not:
- (i) pay or distribute any money or other asset (including by management or other fee, interest, dividend, buy back, return of capital, repayment or redemption) to or for the benefit of a Shareholder in that capacity or to a related body corporate except reasonable directors' fees and salaries and other emoluments;
 - (ii) during the Offer Period and for 90 days thereafter, issue any Shares or agree to do so or grant a person a right to take up any Shares whether exercisable now or in the future subject to any conditions, except in connection with the Offer (including the Shortfall Bookbuild);
- (g) **(No variation)** will not:
- (i) do anything which has the effect of varying or supplementing;
 - (ii) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of;
 - (iii) do or permit anything which would entitle another party to do anything referred to in sub-paragraph (ii) in relation to; or
 - (iv) expressly or impliedly grant any waiver, consent, time or indulgence under or in respect of,
- any Bank Guarantee, Customer Indemnity Deed or the Ranger Government Agreement if to do so would have a material adverse effect on the Rehabilitation or the Issuer's obligations under this Agreement;
- (h) **(Notice to Underwriter)** notify the Underwriter as soon as possible after it becomes aware of:
- (i) any Event of Default;
 - (ii) any substantial dispute between it and a Government Agency; and
 - (iii) any litigation, arbitration, tax claim, dispute or administrative or other proceeding in relation to it involving a claim exceeding A\$1 million or its equivalent other than a claims for worker's compensation;
- (i) **(Updating of costs)** update the Rehabilitation Cost on a half yearly basis by reference to the facts and circumstances then existing and promptly provide the half yearly update to the Underwriter and Shareholders;
- (j) **(Board Charter)** amend and adopt modifications to the Board Charter as approved on 29 January 2015 and ancillary internal processes to reflect the undertakings in this Agreement or as otherwise agreed with the Underwriter; and
- (k) **(Monthly reports)** as soon as practicable (but within 14 days after the end of each calendar month) provide copies of consolidated and unconsolidated monthly summary of cash flow and, at the Underwriter's request, adjusted forward cash flow for the next month to the Underwriter.

10.2 Interest bearing investment

Notwithstanding clause 10.1, the Issuer may invest the net proceeds of the Offer in an interest bearing investment, with an Acceptable Financial Institution, that complies with the following principles:

- (a) preservation of capital and security of the principal is fundamental;
- (b) maintenance of sufficient liquidity to meet all reasonable anticipated Rehabilitation cash flow requirements;
- (c) minimisation of credit risk; and
- (d) strict prohibition on speculative investments.

The principal amount of any investment of Rehabilitation Funds, plus any interest, proceeds or returns made on the principal investment, must be deposited back to the Rehabilitation Account on maturity or termination of the investment.

10.3 Growth Assets

For the avoidance of doubt;

- (a) the Growth Assets do not form part of the Rehabilitation Funds and no part of them needs to be deposited into the Rehabilitation Account;
- (b) subject to this clause 10.3 and clause 10.4, the Issuer may deal with, use or expend Growth Assets as the Board decides from time to time;
- (c) nothing in this Agreement, the Loan Agreement or any other agreement between the parties shall prohibit or restrict the Issuer dealing with, using and expending the Cash Growth Assets as the Board determines from time to time, or carrying on any business in which any Cash Growth Assets are deployed. Without limiting the generality of the foregoing, the Cash Growth Assets may be expended or used for or in connection with any projects or capital commitments that the Board decides and clause 10.1(c) shall not apply in relation to Cash Growth Assets;
- (d) subject to clause 10.4, nothing in this Agreement shall prohibit or restrict the Issuer dealing with, using and expending the Jabiluka Growth Assets as the Board determines from time to time, or carrying on any business in which any Jabiluka Growth Assets are deployed; and
- (e) the approval of the Underwriter and/or its related bodies corporate is not required under clause 10.1(e) for the Issuer to enter into any commitment or incur any expense, and the Underwriter's commitment under the Loan Agreement will not be cancelled merely because approval is not obtained under clause 7.3 of the Loan Agreement, where the commitment or expense relates only to or is to be satisfied solely out of the Cash Growth Assets.

10.4 Jabiluka Growth Assets

- (a) For the avoidance of doubt, dealings with the Jabiluka Growth Assets are subject to the Loan Agreement.
- (b) For so long as the undertakings in clause 10.1 continue, the Issuer will not deal with or create any new economic or legal interest in the Jabiluka Growth Assets, including by way of sale, disposal, grant, new or expanded partnership, joint venture, granting of security over or otherwise encumbering the Jabiluka Growth Assets, without the prior written consent of the Underwriter (not to be unreasonably withheld or delayed). The Underwriter's prior written consent will have regard to the Issuer's assurance that:
 - (i) such dealing with the Jabiluka Growth Assets will not compromise the LTCMA; and

- (ii) the Issuer is satisfied that any incoming counterparty (which need not be named) to such dealing has the capacity and intention to fulfil, comply with and be bound by the terms of the LTCMA.

10.5 Review

If at any time after 31 December 2023 the Issuer believes in good faith that, after the amounts referred to in paragraphs (i) and (ii) of clause 10.1(c) are exhausted, the Rehabilitation Funds will materially exceed the amount required for the Purpose, the parties shall meet and discuss in good faith whether any part of the Rehabilitation Funds should be released and, if the parties so agree, the amount so released shall:

- (a) thereafter form part of the Growth Assets for the purpose of this Agreement (subject to agreement between the parties); or
- (b) otherwise be deployed in such manner as agreed between the parties, including without limitation, capital management initiatives, new investment opportunities or for general corporate purposes.

10.6 Specific performance and injunctive relief

The Issuer agrees and acknowledges that damages will not be an adequate remedy for the Underwriter for any breach of this Agreement and that the Underwriter may seek specific performance or injunctive relief as a remedy for any actual or threatened breach, in addition to any other remedies available at law or in equity under or independently of this Agreement.

10.7 Term of undertakings

- (a) In this clause, **Closure Implementation** means substantial completion in all material respects, of the closure work programs for the key closure activities as described in Chapter 11 – Implementation of the Closure Plan or, if the Closure Plan is amended after the date of this Agreement such that the closure work programs for the key closure activities are no longer described in Chapter 11 - Implementation, the Chapter of the Closure Plan that describes the closure work programs for the key closure activities.
- (b) Each undertaking in clause 10.1 shall continue from the date of this Agreement until any of the following first occurs:
 - (i) Closure Implementation has occurred;
 - (ii) the issue of a close out certificate for the Ranger Project Area under the s. 41 Authority;
 - (iii) Termination; and
 - (iv) the Issuer ceasing to be a Subsidiary of Rio Tinto Limited.
- (c) Schedule 3 shall apply in relation to any Clause 10.7 Dispute and have effect accordingly.

11 Termination

11.1 Termination events

The Underwriter may at any time by notice given to the Issuer immediately, without cost or liability to itself, Terminate this Agreement so that it is relieved of all its obligations under this Agreement if any of the following events occurs before 4:00pm on the Settlement Date:

- (a) (**Offer Materials**) The Offer Materials contain (whether by omission or otherwise) any statement which is false, misleading or deceptive or they otherwise do not comply with the Corporations Act or any other applicable law.

- (b) ***(future matters)** Any statement or estimate in any Offer Materials which relates to a future matter is or becomes incapable of being met.
- (c) **(Entitlement Offer Cleansing Notice)** The Entitlement Offer Cleansing Notice is or becomes Defective, or any amendment or update to the Entitlement Offer Cleansing Notice is issued or is required to be issued under the Corporations Act and, in each case, that Defect or amendment or update to the Entitlement Offer Cleansing Notice is materially adverse from the point of view of an investor.
- (d) **(ASIC action)** ASIC:
 - (i) applies for an order under Part 9.5 in relation to the Offer or the Offer Materials;
 - (ii) holds or commences, or gives notice of intention to hold or commence, a hearing or investigation in relation to the Offer or the Offer Materials under the Corporations Act or the *Australian Securities and Investments Commission Act 2001* (Cth); or
 - (iii) prosecutes or gives notice of an intention to prosecute or commences proceedings against, or gives notice of an intention to commence proceedings against, the Issuer or any of its officers, employees or agents in relation to the Offer or the Offer Materials,and such application, notice or proceeding is not withdrawn within 2 Business Days after it is made or by the Settlement Date.
- (e) **(unable to issue Offer Shares)** The Issuer is prevented from allotting and issuing the Offer Shares in accordance with this Agreement.
- (f) **(quotation)** Approval (subject only to customary conditions) is refused or not granted to:
 - (i) the quotation of the Entitlements on ASX by 10.00am on the Ex Date; or
 - (ii) the quotation of the Offer Shares on ASX by 10.00am on the Quotation Approval Date,or, if any such approval is granted, that approval is withdrawn or qualified.
- (g) **(capital structure)** the Issuer alters its capital structure without the consent of the Underwriter, other than by issuing securities pursuant to the Offer;
- (h) **(listing)** The Issuer ceases to be admitted to the official list of ASX or the Shares are suspended from trading on, or cease to be quoted on, ASX.
- (i) **(Insolvency)** The Issuer is Insolvent or there is an act or omission which is likely to result in the Issuer becoming Insolvent.
- (j) **(withdrawal)** The Issuer withdraws the Offer.
- (k) **(misleading or deceptive conduct)** Civil or criminal proceedings are brought against the Issuer in relation to any fraudulent, misleading or deceptive conduct by or on behalf of the Issuer (whether or not in connection with the Offer).
- (l) **(illegality)** There is an event or occurrence, including any statute, order, rule, regulation, directive or request (including one compliance with which is in accordance with the general practice of persons to whom the directive or request is addressed) of any Government Agency which makes it illegal for the Underwriter to satisfy an obligation under this Agreement.
- (m) **(misrepresentation)** A representation or warranty made or given, or deemed by clause 8 to have been made or given, by the Issuer under this Agreement proves to be, has been or becomes, untrue or incorrect.

- (n) **(breach)** The Issuer fails to perform or observe any of its material obligations under this Agreement.
- (o) **(Timetable)** Any event specified in the Timetable is delayed by the Issuer for more than three Business Days without the prior written approval of the Underwriter (not to be unreasonably withheld for a delay of up to two Business Days).
- (p) ***(material adverse change)** There is a material adverse change in the assets or liabilities, financial position or performance, profits or losses or prospects of the Issuer, including any material adverse change in the assets or liabilities, financial position or performance, profits or losses or prospects of the Issuer from those disclosed to ASX in accordance with the Listing Rules prior to the date of this Agreement or in the ASX Materials, excluding any such change that results from:
 - (i) an increase in the estimated cost of the rehabilitation of the Ranger Project Area as determined by the Assessor (as defined in the Ranger Government Agreement); or
 - (ii) any adjustment of the amount of security required to be provided by the Issuer, under the Ranger Government Agreement.

11.2 Qualified termination events

If an event referred to in clause 11.1 marked with an asterisk (*) occurs, the Underwriter may not Terminate unless the Underwriter has reasonable grounds to believe, and does so believe, that the event:

- (a) is materially adverse from the point of view of an investor; or
- (b) will, or is likely to:
 - (i) give rise to a liability of the Underwriter under any applicable law; or
 - (ii) result in a contravention by the Underwriter or any of its Affiliates of, or the Underwriter or any of its Affiliates being involved in a contravention of, any applicable law.

11.3 Effect of termination

- (a) If the Underwriter Terminates this Agreement, each party will immediately be discharged from its obligations under this Agreement but the Underwriter will be entitled to payment and reimbursement in accordance with clause 7.2. However, the Termination will not limit or prevent the exercise of any other rights and remedies which any of the parties may otherwise have or have accrued under this Agreement.
- (b) Without limiting clause 11.3(a), nothing contained in this clause 11 will prejudice or nullify any claim for damages or other right which the Underwriter or any other Indemnified Party may have against the Issuer, or which the Issuer may have against the Underwriter, for or arising out of any breach of undertaking, warranty or representation or failure to observe or perform an obligation under this Agreement.

11.4 Independent construction

Each of the paragraphs and sub-paragraphs in clauses 11.1 and 11.2 must be construed independently and no paragraph or sub-paragraph is to be limited by implications arising from any other paragraph or sub paragraph.

12 Indemnity

12.1 Indemnity

Subject to clause 12.2, the Issuer unconditionally and irrevocably agrees to indemnify and hold harmless each Indemnified Party against all Losses incurred or suffered directly or indirectly in connection with the Offer or this Agreement, including Losses incurred or suffered as a result of:

- (a) any statement in, or omission from, the Offer Materials or any Publication;
- (b) the distribution of any Offer Materials and the making of the Offer;
- (c) the subscription for, and issue of, Offer Shares under the Offer;
- (d) any breach by the Issuer of, or any failure by the Issuer to perform or observe any of its obligations under, this Agreement;
- (e) any representation or warranty by the Issuer contained in this Agreement not being true or correct;
- (f) the preparation for, or involvement in, any investigation, review or inquiry relating to the Offer, the Offer Materials or any Publication undertaken by ASIC, ASX, any other Government Agency or any other regulatory body, or any legal proceedings in relation to the Offer, the Offer Materials or any Publication; or
- (g) any other Claim under which an Indemnified Party has any liability under the Corporations Act or any other applicable law in relation to the Offer, the Offer Materials or any Publication.

However, the Losses the subject of this indemnity do not include Losses suffered simply as a result of the Underwriter being required to pay the Offer Price in respect of and acquiring the Shortfall Shares in accordance with clause 5.8 of the Agreement.

Each of the paragraphs of this clause 12.1 must be construed independently and no paragraph is to be limited by implications arising from any other paragraph.

12.2 Limit on indemnity

The indemnity to an Indemnified Party in clause 12.1 does not extend to any Loss suffered by that Indemnified Party to the extent that the Loss is finally judicially determined by a court of competent jurisdiction to result from:

- (a) any penalty or fine which an Indemnified Party is required to pay for any contravention by it of the Corporations Act;
- (b) any amount in respect of which this indemnity would be illegal, void or unenforceable under any applicable law; or
- (c) the fraud, gross negligence or wilful misconduct of an Indemnified Party, other than to the extent caused, induced or contributed to by the Issuer or any of its directors, officers, partners, employees, agents or advisers (each, a **Representative**), or caused by an Indemnified Party's reliance on information contained in an Offer Material or Publication or other information provided by or on behalf of the Issuer or any of its Representatives or arises as a consequence of reliance by that Indemnified Party.

12.3 No Claims against Indemnified Parties

- (a) Subject to clause 12.3(b), the Issuer agrees that no Claim may be made by it against the Indemnified Parties, and the Issuer unconditionally and irrevocably releases and discharges each Indemnified Party from any Claim that may be made by it, to recover from that Indemnified Party any Loss incurred or suffered by the Issuer arising directly or

indirectly as a result of the participation of that Indemnified Party in the preparation of the Offer Materials or in relation to the Offer, except in relation to matters where, and to the extent that, any Loss is finally judicially determined by a court of competent jurisdiction to result from the fraud, gross negligence or wilful misconduct of that Indemnified Party or the breach by the Underwriter of its obligations under this Agreement.

- (b) The Issuer agrees that no Claim may be made by it against any director, officer, partner, employee, agent or adviser of the Underwriter or any director, officer, partner, employee, agent or adviser of, any member of the Rio Tinto Group (together, the **Released Parties**), and the Issuer unconditionally and irrevocably releases and discharges each Released Party from any Claim that may be made by it, to recover from any Released Party any Loss incurred or sustained by the Issuer arising directly or indirectly as a result of the participation of that Released Party in the preparation of the Offer Materials or in relation to the Offer.

12.4 Notification

- (a) If an Indemnified Party becomes aware of any Claim in respect of which an Indemnified Party wishes to claim for indemnification under the indemnity in clause 12.1, it must promptly notify (and in any event within 20 Business Days of it forming that opinion) the Issuer of the act, matter or thing (giving such details as are known to it at that time).
- (b) A failure on the part of an Indemnified Party to notify the Issuer in accordance with clause 12.4(a) will not release the Issuer from any obligation or liability which it may have pursuant to this Agreement, except that the liability of the Issuer to indemnify that Indemnified Party under this Agreement will be reduced to the extent to which:
- (A) the Issuer has suffered material damage or material loss; or
- (B) the amount the subject of the indemnity under this Agreement has materially increased,

as a direct result of the Indemnified Party's failure to so notify.

12.5 Obligations of Indemnified Parties

Subject to clause 12.6, the Indemnified Parties must:

- (a) take such reasonable action as the Issuer requests to avoid, dispute, resist, appeal, compromise or defend any Indemnified Claim in respect of it;
- (b) not settle any Indemnified Claim without the prior written consent of the Issuer (such consent not to be unreasonably withheld);
- (c) give all reasonable assistance and co-operation to the Issuer in the conduct of any legal or other proceedings associated with any Indemnified Claim; and
- (d) do anything reasonably necessary or desirable to ensure that the Issuer is subrogated to and enjoys the benefit of the rights of the Indemnified Parties in relation to any cross-claims and to render such assistance as may be reasonably requested by the Issuer for that purpose.

12.6 Conditions precedent to Indemnified Parties' obligations

- (a) The Indemnified Parties are under no obligation under clause 12.5 unless at the time the Issuer requests any of the Indemnified Parties to take any action, the Issuer:
- (i) irrevocably and unconditionally agrees to indemnify the Indemnified Parties against all Losses incurred by the Indemnified Parties in taking the action required, as and when they fall due, including legal costs and disbursements of

its lawyers on a full indemnity basis and the cost of any involvement of any senior officers of the Underwriter at its usual commercial rates;

- (ii) satisfies, and continues to satisfy, the Indemnified Parties of its financial ability to indemnify the Indemnified Parties under this clause 12.
- (b) The Indemnified Parties are under no obligation to take or refrain from taking action under clause 12.5, and the Issuer will have no right to defend or institute legal or other proceedings in the name of the Indemnified Parties, if to do so would, in the reasonable opinion of the Underwriter, be likely to lead to a risk of damage to the Underwriter's or the relevant Indemnified Parties' reputation or standing.

12.7 Separate representation

Notwithstanding anything to the contrary in this clause 12, an Indemnified Party will be entitled at its election to be separately represented in relation to any proceeding arising under this clause 12 where the Issuer has the conduct of the proceeding:

- (a) in any of the following circumstances:
 - (i) without prejudice to its right of indemnity under this clause 12, if a conflict arises for legal counsel chosen by the Issuer or between the interests of the Issuer and the interests of the Indemnified Party;
 - (ii) where there may be legal defences, which have a reasonable prospect of success based on competent legal advice, available to the Indemnified Party that are different from or additional to those available to the Issuer or another Indemnified Party represented by such legal counsel and the counsel appointed by the Issuer does not put on and pursue those defences on behalf of the Indemnified Party to the reasonable satisfaction of such Indemnified Party; or
 - (iii) if the Indemnified Party reasonably believes it desirable to do so in order to protect the Indemnified Party's reputation or standing,and, for the avoidance of doubt, the Indemnified Party will be entitled to be indemnified in each case for the Costs of such representation under the indemnity in clause 12.1; or
- (b) in any other circumstance, at its own cost (except where the Issuer consents in writing to bear the relevant Costs).

12.8 Conduct of proceedings

Subject to clause 12.6, the Issuer may have the sole conduct of any Indemnified Claim, provided that:

- (a) the Underwriter has the right to information, consultation and independent legal representation (subject to clause 12.7) concerning or with respect to the development and defence of any litigation or threatened litigation;
- (b) the Issuer has reasonable regard to preserving the reputation of the Underwriter in conducting the defence of the Indemnified Claim, and the Underwriter remains satisfied that its and the Indemnified Parties' reputations are not threatened by the Issuer's conduct of the defence; and

- (c) the Issuer must not (without the prior written consent of relevant Indemnified Parties) settle, compromise or consent to the entry of any judgement in relation to any Indemnified Claim unless:
 - (i) such settlement, compromise or consent does not include a statement or admission that an Indemnified Party is or was at fault or culpable, failed to act or contravened any applicable law; and
 - (ii) the Issuer obtains an unconditional release of each Indemnified Party from all liabilities arising out of such Indemnified Claim,

and the Issuer must not otherwise make any admission of liability in relation to the Indemnified Claim without the prior written consent of the relevant Indemnified Parties.

12.9 Right to reassume control of proceedings

An Indemnified Party has a right at any time to assume or reassume the control of any legal or other proceedings defended or instituted by the Issuer in the name of that Indemnified Party as contemplated by clause 12.8 (**Reassumed Claim**). If an Indemnified Party does this:

- (a) it will have the right to conduct the same under its sole management and control and will have absolute discretion with regards to the conduct of those proceedings including any decision to settle, compromise or consent to the entry of any judgment in relation to any Reassumed Claim the subject of those proceedings but in doing so, will act reasonably and consult with and take account of the views of the Issuer so far as is reasonably possible;
- (b) the indemnity given by the Issuer in this clause 12 will not apply in respect of any additional Losses directly or indirectly suffered by that Indemnified Party in respect of the Reassumed Claim as a direct result of the conduct of the Reassumed Claim by the Indemnified Party; and
- (c) the Issuer must:
 - (i) render all reasonable assistance and cooperation to the Indemnified Party in the conduct of any Reassumed Claim; and
 - (ii) do anything reasonably necessary or desirable to ensure that the Indemnified Party is subrogated to and enjoys the benefits of the rights of the Issuer in relation to any cross claims and to render such assistance as may be reasonably requested by the Indemnified Party for that purpose,

except where the taking of that action would, in the reasonable opinion of the Issuer, be likely to lead to a risk of damage to the Issuer's reputation or standing.

12.10 Contribution procedure

If for any reason the indemnities contained in this clause 12 are unavailable or insufficient to hold harmless any Indemnified Party against any Loss against which the Indemnified Party is stated to be indemnified under this clause 12 (other than as a result of clause 12.2(c)) (a **Relevant Loss**), then the Issuer agrees to contribute to the Relevant Loss with the Indemnified Parties in accordance with clauses 12.11 to 12.14, in all cases to the maximum extent permitted by law.

12.11 Determination of proportions

- (a) The contribution of the Issuer (on the one hand) and the Indemnified Parties (on the other hand) in relation to the Relevant Loss will be as agreed by the Issuer and the Indemnified Parties (and, failing agreement, as determined by a court of competent jurisdiction) having regard to the participation in, instigation of or other involvement of the Issuer (on

the one hand) and the Indemnified Parties (on the other hand) in the conduct complained of (including the Issuer's and the Indemnified Parties' relative intent, knowledge, access to information and opportunity to correct any misleading or deceptive statement or omission).

- (b) In respect of any Relevant Loss, the Issuer must pay to the Indemnified Parties an amount equal to the contribution of the Issuer to that Relevant Loss (to the extent suffered by the relevant Indemnified Parties), as agreed or determined in accordance with clause 12.11(a).

12.12 No excess contribution

The Issuer agrees with the Underwriter (on behalf of itself and each Indemnified Party) that in no circumstance will the Underwriter and the Indemnified Parties with which it is associated be required to contribute under clause 12.11.

12.13 Limit on contribution

- (a) The Underwriter acknowledges that the Issuer may enter into arrangements which limit the extent to which the Issuer may claim against any third party or third parties in connection with the Offer (a **Relevant Limitation**). If any Loss is suffered by the Issuer for which the Underwriter would otherwise be liable to the Issuer with any third party or third parties, the extent to which such Loss will be recoverable by the Issuer from the Underwriter will:
 - (i) be limited so as to be in proportion to the Underwriter's contribution to the overall fault for such damage or loss, as agreed between the parties or, in the absence of agreement, as finally judicially determined by a court of competent jurisdiction; and
 - (ii) be no more than it would have been had any Relevant Limitation not been agreed to by the Issuer.
- (b) If any Loss is suffered by the Underwriter arising from a liability which would be a liability of the Underwriter with a third party, but for:
 - (i) a Relevant Limitation; or
 - (ii) a limitation on the extent to which the Underwriter may claim against a third party which binds the Underwriter and that has been agreed by the Issuer,the indemnity of the Issuer under this clause 12 will cover any amount which the Underwriter is unable to recover from the third party because of the Relevant Limitation or other limitation.
- (c) The degree to which the Underwriter may rely on the work of any such third party will be unaffected by any Relevant Limitation.
- (d) The Issuer acknowledges that if it suffers any damage or loss for which the Underwriter may become liable due to a Relevant Limitation, it will notify the Underwriter of those circumstances promptly at that time.

12.14 Reimbursement by the Issuer

If an Indemnified Party pays an amount in relation to a Relevant Loss where it is entitled to contribution from the Issuer under this clause 12, the Issuer must promptly reimburse the Indemnified Party for that amount.

12.15 Preservation of rights

Subject to clause 12.2, the rights of an Indemnified Party under this Agreement will not in any way be prejudiced or affected by:

- (a) any involvement by that Indemnified Party in the preparation of, or any approval given by that Indemnified Party concerning, any of the Offer Materials or any Publication;
- (b) any consent to be named in any Offer Materials or Publication;
- (c) any knowledge (actual or constructive) of:
 - (i) any failure by the Issuer to perform or observe any obligations under this Agreement; or
 - (ii) any non-compliance by the Issuer or any of its Subsidiaries with any statutory or ASX requirement concerning the Offer or any of the Offer Materials or any Publication;
- (d) any Termination by the Underwriter;
- (e) any inaccuracy in, or breach or default of, any representation, warranty or undertaking made or deemed to have been made by the Issuer under this Agreement; or
- (f) any other fact, matter or thing which might otherwise constitute a waiver of, or in any way prejudice or affect, any right of an Indemnified Party.

13 Acknowledgments

13.1 Advice and communications

The Issuer acknowledges that:

- (a) while the Underwriter will act as observer in relation to the Due Diligence Investigations in accordance with the Due Diligence Planning Memorandum, the Issuer will rely on its own expertise and on that of specialist legal, accounting and tax advisers in respect of that due diligence;
- (b) the Underwriter is not required to give any legal, accounting, tax, regulatory or other specialist or technical advice in connection with the Offer;
- (c) without limiting clause 13.1(b) in any respect, any advice (whether written or oral) given by the Underwriter to the Issuer, or any communications between the Underwriter and the Issuer, may not be used or relied upon by any third party or disclosed to any third party.

13.2 Underwriter business

The Issuer acknowledges that:

- (a) the Underwriter may have interests that differ from those of the Issuer and may take into account any factors (including those solely in its interest) it considers appropriate in performing duties or exercising rights under this Agreement, and any review by the Underwriter of the Issuer, the Offer, the terms of the Offer Shares and other related matters will be performed solely for its benefit and will not be on behalf of the Issuer or any other person; and
- (b) the Underwriter is not obliged to disclose to the Issuer or utilise for the benefit of the Issuer, any non-public information which the Underwriter obtains in the normal course of its business where such disclosure or use would result in a breach of any obligation of confidentiality or any internal information management or Chinese wall policies of the Underwriter.

13.3 No fiduciary relationship

- (a) The parties agree that it is not the intention of the parties to create a fiduciary relationship between them.
- (b) Without limiting clause 13.3(a), the Issuer acknowledges and agrees that:
 - (i) it is contracting with the Underwriter on an arm's-length basis to provide the services set out in this Agreement;
 - (ii) the Underwriter is not assuming any duties or obligations other than those expressly set out in this Agreement; and
 - (iii) the Underwriter in providing services to the Issuer in connection with the Offer, including in acting pursuant to the terms of this Agreement, has acted and is acting as independent contractor and not as a fiduciary and the Issuer does not intend that the Underwriter act in any capacity other than independent contractor, including as a fiduciary or in any other position of higher trust and nothing in this Agreement or the nature of the services, whether before or after the date of this Agreement, creates a fiduciary relationship between the Underwriter and the Issuer or any of their respective shareholders, creditors, employees or any other party.

13.4 Information

- (a) The Issuer acknowledges and agrees that the Underwriter:
 - (i) will use and rely on information provided by or on behalf of the Issuer or its agents or advisers (including financial and accounting information) in performing their obligations under this Agreement without having independently verified the information;
 - (ii) does not assume responsibility for the accuracy or completeness of the information contemplated by clause 13.4(a)(i) or any other information on which it may rely in connection with this Agreement; and
 - (iii) will not be in breach of this Agreement in relying on any information contemplated by clauses 13.4(a)(i) or 13.4(a)(ii).
- (b) The Issuer must promptly inform the Underwriter if it becomes aware that any information provided by the Issuer or its agents or advisers to the Underwriter or publicly is not or ceases to be true, accurate and complete in all material respects and not misleading or deceptive.
- (c) The Underwriter acknowledges and agrees that:
 - (i) all information provided or made available by or on behalf of the Issuer or its agents or advisers to the Underwriter under this Agreement, whether before or after execution of this Agreement and including information referred to in paragraph 13.4(a), is confidential to the Issuer; and
 - (ii) it must keep all such information confidential and not disclose (and must ensure that none of its agents or advisers discloses) any such information to any person except:
 - (A) if required to be produced by law, regulation, the rules of any stock exchange, self-regulating authority or regulatory authority;
 - (B) if required in relation to any actual or potential claim, proceedings or regulatory investigation, inquiry or hearing against or involving the

Underwriter (or its Related Entities) in relation to the Offer Materials or the Offer, including investigations, inquiries or hearings by regulatory or self-regulating authorities;

- (C) the Underwriter may provide them to its legal advisers to obtain legal advice and financial advisers to provide financial advice (as applicable) in relation to the Offer on a confidential and non-reliance basis, in which case it must ensure that its legal and financial advisers keep them confidential;
- (D) to the extent the information has been developed independently by the Underwriter without reference to the confidential information, is already in the possession of the Underwriter prior to receiving it from the Issuer or its agents or advisers or has been received from a third party entitled to disclose the information;
- (E) to Related Entities or affiliates of the Underwriter or to a person who in the ordinary course of the business of the Underwriter has access to the papers and records of the Underwriter; or
- (F) to the extent that the relevant materials have come into the public domain (other than by the fault of the Underwriter or through breach of this clause 13.4(c)),

provided that the Underwriter must take all reasonable steps to ensure that persons to whom disclosures are made under paragraph (C) or (E) maintain confidentiality of the information.

This paragraph does not apply in relation to information which has been or is made generally available (other than because of a breach of this paragraph by the Underwriter).

- (d) The obligations under clause 13.4(c) apply until, and terminate on, the earlier of the date the relevant information is no longer confidential (in accordance with clause 13.4(c)(ii) above) and the date which is two years from the date of this Agreement.

13.5 Judgement regarding Offer

The Issuer acknowledges and agrees that it is solely responsible for making its own independent judgement with respect to the Offer.

14 GST

14.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the GST Amount). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

14.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any Cost or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant Cost or other liability.

14.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

14.4 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

14.5 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

15 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or an authorised officer of the sender (or in the case of email, set out the full name and position or title of the sender or authorised officer of the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:

to Issuer: Address: Level 3, Energy House 18-20 Cavenagh Street,
Darwin NT 0801, Australia

Email: james.oconnell@riotinto.com

Attention: James O'Connell (ERA Company Secretary)

to Underwriter: Address: Level 18, Central Park, 152-158 St Georges Terrace,
Perth WA 6000, Australia

Email: CompanySecretaryNotices@riotinto.com

Attention: Robert O'Toole (Chief Counsel, Energy and Minerals);
North Limited Company Secretary.

- (c) will be conclusively taken to be duly given or made and received:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by express post, to an address in the same country, two Business Days after the date of posting;
 - (iii) in the case of delivery by any other method of post, six Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and

- (iv) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,
- (v) but if the result is that a Notice would be taken to be given or made and received:
 - (A) in the case of delivery by hand or post, at a time that is later than 5pm;
 - (B) in the case of delivery by email, at a time that is later than 7pm; or
 - (C) on a day that is not a Business Day,

in the place specified by the intended recipient as its postal address or email address under clause 15(b), it will be conclusively taken to have been duly given or made and received at the start of business on the next Business Day in that place.

16 General

16.1 Entire agreement

This Agreement:

- (a) contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) by or between the parties with respect to the Offer, and none of the parties has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it; and
- (b) subject to clauses 10.3 and 10.4, does not affect the rights or obligations of the Issuer and the Underwriter under any other agreement between the parties, including the Loan Agreement.

16.2 Confirmation regarding Loan Agreement

- (a) For the purpose of clause 8 of the Loan Agreement, the increase in the Rehabilitation Cost arising from the finalisation of the Feasibility Study the subject of the Issuer's ASX announcement dated 8 February 2019 is:
 - (i) approved by the Underwriter; and
 - (ii) acknowledged not to be a Review Event (as defined in the Loan Agreement).
- (b) For the avoidance of doubt, the Underwriter consents for the purpose of the Loan Agreement to the Company making the Offer and each issue of Shares as contemplated by the Offer and this Agreement (including under the Shortfall Bookbuild).

16.3 Conflict of interest

The parties' rights and remedies under this Agreement may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

16.4 Consents or approvals

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion, unless this Agreement expressly states otherwise.

16.5 Amendment and assignment

- (a) This Agreement can only be amended, supplemented, replaced or novated by another agreement signed by the parties.
- (b) This Agreement may be amended by the parties (including in a manner that adversely affects the interests of the Indemnified Parties) without obtaining the consent of the Indemnified Parties.
- (c) The rights and obligations of each party under this Agreement cannot be assigned without the prior written consent of the other.

16.6 Time of the essence

Time will be the essence of this Agreement.

16.7 Waiver

- (a) A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver.
- (b) A single or partial exercise, or waiver of the exercise, of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (d) A party is not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under this Agreement.

16.8 Remedies cumulative

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

16.9 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be reasonably necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

16.10 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

16.11 Ongoing benefit and operation of provisions

- (a) Each of the representations, warranties, undertakings, indemnities and releases given to the Underwriter under this Agreement are for the benefit of the Underwriter and each of the other Indemnified Parties (whether or not party to this Agreement), and those representations, warranties, undertakings, indemnities and releases may be enforced on their behalf by the Underwriter.

- (b) Subject to this Agreement, the obligations of the Issuer under this Agreement will subsist for so long as may be necessary in order to give full force and effect to the obligations, terms and conditions of this Agreement on the part of the Issuer to be complied with, observed and performed.
- (c) Without limiting clause 16.11(b), the representations, warranties, undertakings, indemnities and releases contained in this Agreement are continuing obligations and will not merge on Completion, Termination or other expiry of this Agreement. It is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity under this Agreement.

16.12 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

16.13 Governing Law

This Agreement is governed by the laws of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there with respect to any legal action or proceedings arising out of or in connection with or in any way related to this Agreement or its subject matter.

16.14 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument, the date of which will be the date on which the last counterpart is executed.

Schedule 1**Timetable**

| Event | Date |
|--|-----------------------------|
| Launch Date – Issuer lodges ASX Materials with ASX | Friday, 15 November 2019 |
| Despatch of notices to Shareholders | Monday, 18 November 2019 |
| Ex Date – first day of deferred settlement trading in Entitlements | Tuesday, 19 November 2019 |
| Record Date – record date for the Offer | Wednesday, 20 November 2019 |
| Despatch Date – date on which Offer Materials are despatched to Eligible Shareholders | Friday, 22 November 2019 |
| Opening Date – first date on which acceptances of the Offer may be received | Friday, 22 November 2019 |
| Entitlements trading ends | Wednesday, 4 December 2019 |
| Shares commence trading on a deferred settlement basis | Thursday, 5 December 2019 |
| Closing Date – Offer closes at 5:00pm | Wednesday, 11 December 2019 |
| Shortfall Notification Date | Monday, 16 December 2019 |
| Under-subscriptions announced to ASX – Issuer announces to ASX the number of Shortfall Shares | Monday, 16 December 2019 |
| Settlement Date - Issuer lodges final Appendix 3B with ASX | Wednesday, 18 December 2019 |
| Quotation Approval Date | Wednesday, 18 December 2019 |
| Issue Date - Issue of Offer Shares under Offer. Deferred settlement trading on Shares ends. | Wednesday, 18 December 2019 |
| Normal settlement trading in Shares re-commences | Thursday, 19 December 2019 |

Schedule 2

Certificate

To: North Limited
Level 18, Central Park, 152-158 St Georges
Terrace, Perth WA 6000 Australia
Attention: [*]
Email: [*]

Certificate – Underwriting Agreement

We refer to the Underwriting Agreement dated [*] November 2019 between Energy Resources of Australia Limited (ABN 71 008 550 865) and North Limited (ABN 22 005 233 689) (the **Agreement**).

Terms defined in the Agreement have the same meaning when used in this Certificate.

The Issuer hereby certifies to the Underwriter as at 8am on the date of this Certificate that after due and proper enquiry, other than as disclosed in this Certificate:

- (a) each Condition Precedent which must be satisfied by 9.00am on the date of this Certificate has been, or upon delivery of the Certificate will be, satisfied or waived by the Underwriter;
- (b) the Issuer has complied with all obligations on its part to be performed:
 - (i) under the Agreement; and
 - (ii) in respect of the Offer under statute or otherwise;
- (c) the representations and warranties made by the Issuer pursuant to clause 8 of the Agreement are true and correct and there has been no breach of them; and
- (d) none of the events described in clause 11 has occurred.

[Note: Insert qualifications to any of the above statements, if any.]

This Certificate is dated [*].

Executed in accordance with section 127 of
the *Corporations Act 2001* by **Energy
Resources of Australia Limited:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

Schedule 3

Dispute Resolution

1. DISPUTE ESCALATION FRAMEWORK

1.1 Application

Any Clause 10.7 Dispute must be determined in accordance with the procedure in this clause 1 of this schedule.

1.2 Notice

If any Clause 10.7 Dispute arises, a party to the Clause 10.7 Dispute (**Referring Party**) may by giving notice to the other party to the Clause 10.7 Dispute (**Clause 10.7 Dispute Notice**) refer the Clause 10.7 Dispute to the Senior Representatives for resolution. The Clause 10.7 Dispute Notice must:

- (a) be in writing;
- (b) state that it is given pursuant to this clause 1.2 of this Schedule 3;
- (c) include or be accompanied by reasonable particulars of the Clause 10.7 Dispute including:
 - (i) a brief description of the circumstances in which the Clause 10.7 Dispute arose;
 - (ii) references to any:
 - (A) provisions of this document or any other relevant document;
 - (B) acts or omissions of any person, relevant to the Clause 10.7 Dispute;
 - (iii) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.

1.3 Senior Representatives

In this Schedule, **Senior Representative**, in relation to a party, means a person nominated by the party for the purpose of resolving the Clause 10.7 Dispute under clause 1 of this schedule.

A Senior Representative must be nominated by each party within two Business Days of the Referring Party giving the Clause 10.7 Dispute Notice.

Each party must ensure that its Senior Representative has full authority to resolve any Clause 10.7 Dispute.

1.4 Negotiation

- (a) Within 15 Business Days of the Referring Party giving the Clause 10.7 Dispute Notice (**Negotiation Period**), the Senior Representatives must meet at least once to attempt to resolve the Clause 10.7 Dispute. The parties must use reasonable endeavours to attempt to resolve the Clause 10.7 Dispute and must not delegate the function of the Senior Representative to any other person.

- (b) The Senior Representatives may meet more than once to resolve a Clause 10.7 Dispute. The Senior Representatives may meet in person, via telephone or videoconference, or any other agreed means of instantaneous communication to effect the meeting.

1.5 **Conditions precedent to expert determination or litigation**

- (a) Where a Clause 10.7 Dispute is not resolved within the Negotiation Period, the Clause 10.7 Dispute must be resolved by expert determination in accordance with the procedure set out in clause 2 of this Schedule 3.
- (b) Subject to clause 1.7 of this Schedule 3, a party must not refer a Clause 10.7 Dispute to expert determination unless:
 - (i) a Clause 10.7 Dispute Notice has been given; and
 - (ii) the Negotiation Period has expired.

1.6 **Continuance of performance**

Despite the existence of a Clause 10.7 Dispute, the parties must continue to perform their respective obligations under this document.

1.7 **Summary or urgent relief**

Nothing in this clause 1 of this Schedule 3 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Clause 10.7 Dispute.

2. **EXPERT DETERMINATION PROCESS**

2.1 **Expert determination rules**

- (a) Any expert determination is to be conducted in accordance with the Expert Determination Rules 2016 published by the Resolution Institute (***Expert Determination Rules***).
- (b) To the extent of any inconsistency between the terms of this Schedule and the Expert Determination Rules, the terms of this Schedule 3 shall prevail.

2.2 **Jurisdiction of expert**

Except by the express prior written agreement of the parties, an expert will have jurisdiction to determine a Clause 10.7 Dispute.

2.3 **Appointment of expert**

- (a) The expert determination will be conducted by an expert agreed between the parties or, in the absence of such agreement, by a suitable expert appointed by:
 - (i) the Resolution Institute;
 - (ii) in the event that the Resolution Institute is the subject of any merger, acquisition, demerger, restructure, administration or liquidation, any successor organisation to the Resolution Institute;
 - (iii) in the event that the Resolution Institute is dissolved and no successor organisation exists, by any suitable expert appointing body chosen by the Referring Party

in accordance with the Expert Determination Rules.

- (b) The parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the expert determination process.

2.4 Agreement with expert

- (a) The expert will not be liable to the parties for anything arising out of, or in any way connected with, the expert determination process, except in the case of fraud.
- (b) The parties must enter into an agreement with the appointed expert in substantially the same terms as prescribed by Schedule 4 or such other terms as the parties and the expert may agree (**Expert Determination Agreement**).
- (c) The parties must not withhold agreement to:
 - (i) any amendment that the expert requests to those terms contained in Schedule 4 provided the amendment is reasonable and does not conflict with this clause 2 of this Schedule 3; or
 - (ii) any reasonable fees and disbursements the expert requests to be set out in the Expert Determination Agreement.

2.5 Not arbitration

An expert determination conducted under this clause 2 of this Schedule 3 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

2.6 Procedure for determination

The expert:

- (a) will not be bound by the rules of evidence;
- (b) must act fairly and impartially as between the parties, giving each party a reasonable opportunity to:
 - (i) put its case and deal with the case of any opposing party; and
 - (ii) make submissions on the conduct of the expert determination;
- (c) subject to clause 2.6(b) of this Schedule 3, may:
 - (i) proceed in any manner they think fit;
 - (ii) conduct any investigation which they consider necessary to resolve the Clause 10.7 Dispute;
 - (iii) examine such documents, and interview such persons, as they may require and may make such directions for the conduct of the determination as they consider necessary;
- (d) must disclose to the parties any:
 - (i) interest they have in the outcome of the determination;
 - (ii) conflict of interest;
 - (iii) conflict of duty;

- (iv) personal relationship that the expert has with either party, or either party's representatives, witnesses or experts; and
 - (v) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- (e) must not communicate with one party without the knowledge of the other party.

2.7 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 2 of this Schedule 3 within 2 months after the date of acceptance by the expert of their appointment or such longer period as the parties may agree.

2.8 Determination of expert

- (a) The determination of the expert:
- (i) must be in writing and must include the expert's opinion with respect to the matters in question and the reasons for the decision;
 - (ii) will be final and binding on the parties; and
 - (iii) the parties must do all things necessary to give effect to and comply with the determination of the expert.

2.9 Costs

- (a) Each party shall bear its own Costs in respect of any expert determination.
- (b) The parties shall be jointly and severally liable for the expert's fees and Costs.

Schedule 4

Form of Expert Determination Agreement

THIS AGREEMENT is made on [•]

BETWEEN:

[insert names of parties to the Clause 10.7 Dispute, as appropriate]

- (1) **North Limited** ABN 22 005 233 689 (the **Underwriter**);
- (2) **Energy Resources of Australia Limited** ABN 71 008 550 865 (the **Issuer**); and
- (3) [•] ACN [•] (the **Expert**).

RECITALS:

[Recitals to be amended, as appropriate]

- (A) The Underwriter and the Issuer are parties to an Underwriting Agreement dated [•] (the **Underwriting Agreement**) under which they have agreed that certain disputes between any or all of them under or in connection with the Underwriting Agreement are to be determined by any Expert.
- (B) A Clause 10.7 Dispute (as defined in the Underwriting Agreement) has arisen between the Underwriter and the Issuer (the **Appointing Parties**) under or in connection with clause 10.7 of the Underwriting Agreement, being the Clause 10.7 Dispute further described in Item 1 of the Appendix.
- (C) The Expert has been appointed to determine the Clause 10.7 Dispute pursuant to the procedure described in Schedule 3 of the Underwriting Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

Words and phrases used in this document, unless defined in this document or the contrary intention appears have the same meaning as attributed to these words in the Underwriting Agreement.

2. DETERMINE THE CLAUSE 10.7 DISPUTE

The Expert must determine the Clause 10.7 Dispute referred to him or her in accordance with the Underwriting Agreement and the Expert Determination Rules.

3. RELEASE

The Expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

4. REMUNERATION

In consideration of the Expert performing the obligations under this document, the parties will jointly pay to the Expert the amounts set out in Item 2 of the Appendix or such other amount as is agreed between all parties to this document.

5. TERMINATION

This document may be terminated by either of the Appointing Parties by giving the other party and the Expert 10 Business Days' written notice if any of the following events occurs:

- (a) the Expert is declared of unsound mind or mentally ill;
- (b) the Expert is declared bankrupt;
- (c) the Expert commits any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the parties; or
- (d) the Expert is prevented by prolonged illness or incapacity from performing his or her obligations under this document.

6. NOTICES

All notices to be given to the Expert under this document are properly given if hand delivered to the Expert or sent by certified or registered mail to the Expert's address set out below or to such other address as the Expert may from time to time advise by notice in writing.

Expert

Attention: [•]
 Email address: [•]
 Address: [•]

7. GOVERNING LAW


This agreement will be construed for all purposes pursuant to the laws applying to the Underwriting Agreement.

APPENDIX

| | |
|-------------------------------|-----------------------------------|
| Item 1: (Recital B) | Clause 10.7 Dispute [•] |
| Item 3: (Clause 4) | Remuneration [•] |

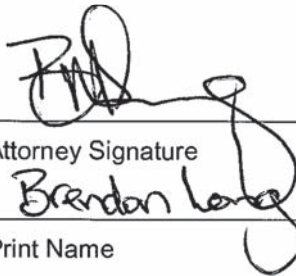
Executed

Signed for North Limited by its attorney
dated 22 October 2019 in the
presence of:



Witness Signature
Robert O'Toole

Print Name



Attorney Signature
Brendan Long

Print Name

Executed in accordance with section 127 of
the *Corporations Act 2001* by **Energy
Resources of Australia Limited:**

Director Signature

Print Name

Director/Secretary Signature

Print Name

Executed

Signed for North Limited by its attorney
dated _____ in the
presence of:

Witness Signature

Print Name

Attorney Signature

Print Name

Executed in accordance with section 127 of
the *Corporations Act 2001* by **Energy
Resources of Australia Limited:**



Director Signature

PAUL ARNOLD

Print Name



Director/Secretary Signature

JAMES O'CONNELL

Print Name